

Daredevil: Legal (and Moral?) Vigilante

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Foggy Nelson: What are you doing, Matt? You're a lawyer. You're supposed to be helping people.

Matt Murdock: I am.

Foggy Nelson: In a mask! Do you know what they call that? A vigilante. Someone who acts outside of the law.¹

* * *

Foggy Nelson: This trial isn't about vigilantes. It's about the failure of the criminal justice system.²

In 1964, the comic world was introduced to its first physically disabled practicing attorney: Matt Murdock. Initially a proud graduate of "State College" and later more impressively pedigreed as a graduate of either Columbia or Harvard Law, Murdock supplemented his day job as attorney with a side of vigilante justice as Daredevil.

In 2003, Murdock became the only attorney superhero to appear as the title character in a movie. A truly awful movie, yes, but a movie all the same. And then in 2015, thanks to the talents of Drew Goddard, Murdock became the star of a terrific television series.

But while it makes for good comics and television, does it make for good law? Good policy? Is there such a thing as moral vigilantism, and, if so, is Matt Murdock a moral vigilante? What of his foil, the Punisher, or the police officer who comes around to assisting Daredevil's endeavors? I propose preliminary answers to these questions, including considering vigilantism as theorized by Paul and Sarah Robinson, Les Johnston, and Travis Dumsday. Their metrics are helpful and illuminating, but not, I think, a fully satisfying articulation of what constitutes moral vigilantism. And if we cannot adequately discern moral vigilantism in fictional characters, we will fare no better in the real world. There remains more good work to be done—and more good comics to be written.

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¹ *Daredevil: Nelson v. Murdock* (Netflix Apr. 10, 2015).

² *Daredevil: Semper Fidelis* (Netflix Mar. 18, 2016).

| | |
|--|-----|
| I. INTRODUCTION | 135 |
| II. THE DAREDEVIL STORY | 136 |
| A. <i>Stan Lee's Daredevil</i> | 136 |
| B. <i>Frank Miller's Reimagining</i> | 139 |
| C. <i>The Punisher</i> | 141 |
| D. <i>The 2015–2016 Daredevil</i> | 142 |
| 1. Season One (2015) | 142 |
| 2. Season Two (2016) | 145 |
| III. <i>DAREDEVIL</i> THEMES | 148 |
| A. <i>Humanity</i> | 148 |
| B. <i>Legal Accuracy</i> | 150 |
| C. <i>Defense Attorney Role Model</i> | 154 |
| D. <i>Catholicism</i> | 157 |
| IV. <i>DAREDEVIL</i> AND VIGILANTISM | 158 |
| A. <i>Defining a Vigilante</i> | 158 |
| 1. Paul and Sarah Robinson | 160 |
| i. Ten Rules (Whittled to Around Five) | 161 |
| ii. Shadow Vigilantes and the Vigilante Echo | 168 |
| B. <i>Matt Murdock/Daredevil</i> | 170 |
| C. <i>Frank Castle/The Punisher</i> | 172 |
| D. <i>Brett Mahoney</i> | 176 |
| E. <i>Les Johnston and Travis Dumsday</i> | 178 |
| V. CONCLUSION | 181 |

I. INTRODUCTION

I come to this project as a fan of comics, but on this—like with music, food, or wines—one should be careful. I am not a *real* fan. I merely enjoy a good comic now and again. I leave the dressing up to others—no cosplay for me—and I might even occasionally confuse whether a particular villain belongs to Marvel or DC.

Probably like many of us, I am really just a fan of a good story. Whether it is a novel, a musical, a comic, or a television cartoon or drama, I like a story that distracts, but I love a story that informs—not by preaching at me how I should be, but by tweaking my conscience and curiosity, causing me to wonder just what *is* right and wrong, rich and poor, fulfilled and merely passing time. In all this, comics can satisfy, and so after describing the history of the Daredevil story in Part II, I briefly comment on diverse components of the current Daredevil series in Part III—its humanity, its legal accuracy, its place as an attorney role model, and its use of religion. For a reader interested in vigilantism but not so much in comics (alas), you might skim these sections. In Part IV, I dig into vigilantism: what is it, when is it morally justified, and how do the Daredevil characters fare?

Before turning to that structure, I would be remiss if I did not remember another fan of Matt Murdock who was an icon in our criminal justice community. In 2004, Andrew E. Taslitz published one of his many articles in the first volume of this law review. Entitled “Daredevil and the Death Penalty,” Professor Taslitz reflected on what the 2003 Daredevil movie might portend for American perceptions of capital punishment.³ That movie, though predictably playing on some of the same themes I will describe regarding the 2015–2016 television series,⁴ is, unfortunately, truly awful. Indeed, it is so awful that, if you have not seen it, you can do yourself a huge favor by keeping it that way. Everything is less interesting and less believable, as both critics and movie watchers can attest.⁵ It is so awful that Ben Affleck should have kept his promise not to make another

³ Andrew E. Taslitz, *Daredevil and the Death Penalty*, 1 OHIO ST. J. CRIM. L. 699, 714–17 (2004). See also DAREDEVIL (20th Century Fox Feb. 14, 2003). Matt Murdock thus became the first attorney superhero to appear as a title character in a movie. William A. Hilyerd, *Hi Superman, I'm a Lawyer: A Guide to Attorneys (and Other Legal Professionals) Portrayed in American Comic Books: 1910-2007*, 15 WIDENER L. REV. 159, 173 n.115 (2009).

⁴ In the movie's title sequence, a bloodied Daredevil grasps onto a church's cross for support. See *infra* Part III.D. But unlike in the later television series, an angry Matt Murdock first kills in vengeance, after which he decides to stop being another ‘bad guy.’ See *infra* Part II.D.

⁵ Compare the Tomatometer (44%) and Audience Score (35%) for the 2003 film (*Daredevil*, ROTTEN TOMATOES, <https://www.rottentomatoes.com/m/daredevil/> [https://perma.cc/PP29-D7PM]), with the Tomatometer (98% and 76%, respectively) and Audience Score (96% and 95%, respectively) for the first two seasons of the television series (*Marvel's Daredevil: Season 1*, ROTTEN TOMATOES, <https://www.rottentomatoes.com/tv/daredevil/s01/> [https://perma.cc/5SZ8-DD9K] and *Marvel's Daredevil: Season 2*, ROTTEN TOMATOES, <https://www.rottentomatoes.com/tv/daredevil/s02/> [https://perma.cc/PS8N-L6V6]) (all links last visited Nov. 11, 2016).

superhero movie,⁶ something that would have spared us another poor performance in the slightly-less-bad *Batman v. Superman*.⁷

In short, in 2003, Taslitz had infinitely worse source material. But he worked it as only he could, including seeing humanity and meaning where many saw only a superficial mess.⁸ For those blessed to have known Taslitz—aka ‘Taz’—it is not hard to understand why he took interest in “a redheaded kid growing up in the notorious slum of Hell’s Kitchen” who developed a firm sense of justice and fair play.⁹ Redhead Taz grew up in the Bronx,¹⁰ and his experiences there are priceless. In one, in order to avoid more pummelings, Taz secretly tutored a bully to ‘A’ grades. If there were a Matt Murdock, one can only think he would see in this a kindred—albeit less martial—spirit.

Taz should have lived long enough to write this, or something much better, himself. We miss him dearly.

II. THE DAREDEVIL STORY

A. Stan Lee’s Daredevil

The original Daredevil comic, released in April 1964, was written by Stan Lee, who would write essentially the first fifty issues.¹¹ Although definitely a product of the era and therefore in tone hardly recognizable to a fan of the current

⁶ See Barbara Vancheri, *10 Reasons Why Everyone Cannot Wait for Batman v Superman*, PITTSBURGH POST-GAZETTE (Mar. 24, 2016, 12:00 AM), www.post-gazette.com/ae/movies/2016/03/24/10-reasons-why-everyone-cannot-wait-for-Batman-v-Superman/stories/201603240005 [<https://perma.cc/AH56-5HB6>] (“By playing a superhero in ‘Daredevil,’ I have inoculated myself from ever playing another superhero. Wearing a costume was a source of humiliation for me and something I wouldn’t want to do again soon.”). Unfortunately, the viewer suffers a similar humiliation.

⁷ BATMAN V SUPERMAN: DAWN OF JUSTICE (Warner Bros. Mar. 25, 2016). This junker earned an embarrassing Tomatometer of 27% and an Audience Score of 63%. *Batman v Superman: Dawn of Justice*, ROTTEN TOMATOES, https://www.rottentomatoes.com/m/batman_v_superman_dawn_of_justice [<https://perma.cc/G6VR-4KFQ>] (last visited Sept. 2, 2017). It is less awful than 2003’s *Daredevil*, but certainly not good. For the record: no, I do not believe that Superman is dead, though the movie invoked its own superpower in being sufficiently bad such that no viewer could care much whether he was.

⁸ Taslitz poignantly reflected that “perhaps such movies reach only *my* soul, which is in many ways still that of a twelve-year-old child.” Taslitz, *supra* note 3, at 712. Of such is the Kingdom.

⁹ *Id.* at 700.

¹⁰ See Megan McDonough, *Andrew E. Taslitz, Law Professor, Dies at 57*, WASH. POST (Mar. 4, 2014), https://www.washingtonpost.com/local/obituaries/andrew-e-taslitz-law-professor-dies-at-57/2014/03/04/31c15354-a332-11e3-8466-d34c451760b9_story.html [<https://perma.cc/X8XW-2K5C>].

¹¹ STAN LEE ET AL., DAREDEVIL EPIC COLLECTION: THE MAN WITHOUT FEAR 5 (2016) (collecting Daredevil Volumes 1–21) [hereinafter DAREDEVIL EPIC]; *Creators: Writers – Volume 1*, DAREDEVIL: THE MAN WITHOUT FEAR (May 20, 2017, 12:36 PM), <http://www.manwithoutfear.com/daredevil-writers-volume-1-sorted-alphabetical.shtml> [<https://perma.cc/2VJM-LKX4>].

television series, it nonetheless contains core aspects of the origin story that have withstood the test of time. As described in detail below, the story would be modernized in the early 1980s when Frank Miller would join the authoring team.¹²

In the original telling, Matt Murdock's father—the boxer 'Battling' Jack Murdock—is a widower, and he fulfills the promise made to his departed wife that Matt will focus on education, not sports, so as to be nothing like the "uneducated pug" that Jack considers himself.¹³ Thus, young Matt spends all his time studying,¹⁴ for which the neighborhood kids give him the ironic nickname of 'Daredevil.'¹⁵ Or at least most of his time is spent studying, as Matt begins surreptitiously training with his dad's equipment when his father is out of town for a fight.¹⁶

This arrangement suits them both until the aging Jack can no longer get honest fights, which could not come at a worse time with Matt's impending college enrollment.¹⁷ Thus, Jack turns to a shady promoter known as 'the Fixer,' and he can't believe his good fortune when Fixer claims the fights won't even be rigged.¹⁸ But Fixer is lying, merely setting up the gullible Jack to take a big fall.¹⁹

That same day, "[a]s fate would have it," the teenage Matt is returning from the library when he sees a blind man crossing the street, about to be struck by a carelessly driven truck belonging to Ajax Atomic Labs.²⁰ Matt, "his supple muscles responding to the emergency with the speed of thought," saves the blind man.²¹ But Matt is badly injured, losing his own eyesight to spilled radioactive chemicals in the process.²² Fortunately—this being a superhero origin story, after all—Matt's other senses are thereby enhanced, giving him a radar-like sense of space,²³ and super hearing that operates as a lie detector.²⁴

¹² See *infra* Part II.B; *Daredevil* #163, DAREDEVIL: THE MAN WITHOUT FEAR (May 9, 2017, 2:57 PM), <http://www.manwithoutfear.com/daredevil-volume-1/issue/163> [<https://perma.cc/G3B8-86KM>] (summarizing the first issue on which Frank Miller worked).

¹³ DAREDEVIL EPIC, *supra* note 11, at 9.

¹⁴ *Id.* at 10.

¹⁵ *Id.*

¹⁶ *Id.* at 11.

¹⁷ *Id.*

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 15.

²⁰ *Id.* at 12–13.

²¹ *Id.* at 13.

²² *Id.*

²³ *Id.* at 15.

²⁴ *Id.* at 21. He can "recognize any girl by her perfume [and] any man by his hair tonic," and his now-super taste can detect "exactly how many grains of salt are on a piece of pretzel." *Id.* at 14. Imagine the trouble such a man could cause for the modern food industry. See Abha Bhattarai, *A Man Is Suing Hershey for 'Under-Filling' His Box of Whoppers*, WASH. POST (May 25, 2017), <https://www.washingtonpost.com/news/business/wp/2017/05/25/a-man-is-suing-hershey-for-under-filling-his-box-of-whoppers/> [<https://perma.cc/E5HQ-XYP2>] ("Recent filings allege that Wise Foods'

The now-blinded but extra-able Matt continues his training and his studies, and he graduates from high school.²⁵ His father Jack is busy winning rigged fights, enabling him to send Matt to State College, where Matt quickly bonds with his roommate, Franklin ‘Foggy’ Nelson.²⁶ For Jack’s biggest fight, Matt and Foggy are in attendance to cheer him on.²⁷ Jack decides he can’t throw the fight as Fixer has instructed—it would let Matt down—so Battling Jack proudly knocks out Dynamite Davis.²⁸ Matt shares in his dad’s triumph, but that triumph costs Jack his life—he is murdered by one of Fixer’s goons as he leaves the gym.²⁹

With Foggy’s encouragement, Matt presses on.³⁰ And because Stan Lee didn’t realize that American legal education is a graduate degree, Matt graduates from college as valedictorian and immediately opens a law office with Foggy,³¹ making him the first physically disabled attorney to star in a comic.³² And because the office space is bankrolled by Foggy’s father, they hire secretary Karen Page.³³ And because it is 1964, she is “gorgeous Karen Page” on the front cover,³⁴ and the sophistication of her role only goes downhill—if possible—from there.³⁵

Matt of course has not forgotten about his father’s murder; instead, he sews together a yellow and black costume and adopts the Daredevil persona in order to seek revenge.³⁶ He beats up Fixer’s crew,³⁷ and tracks down Fixer and his hired gun Slade.³⁸ Fixer dies of a heart attack, and Slade is tricked into confessing to the police.³⁹

bags of chips contain 67 percent air, Barilla is underfilling boxes of pasta, and Starbucks is putting too much ice in its iced coffee. . . . Last year, Subway settled with customers who sued the company for selling foot-long subs that fell short of 12 inches.”).

²⁵ DAREDEVIL EPIC, *supra* note 11, at 14.

²⁶ *Id.* at 14–15. Murdock would later be more impressively pedigreed as a graduate of either Columbia or Harvard Law. See Hilyerd, *supra* note 3, at 173 n.117; FRANK MILLER ET AL., DAREDEVIL: THE MAN WITHOUT FEAR 50–51, 105 (1993).

²⁷ DAREDEVIL EPIC, *supra* note 11, at 16.

²⁸ *Id.* at 15–16.

²⁹ *Id.* at 17.

³⁰ *Id.*

³¹ *Id.*

³² Hilyerd, *supra* note 3, at 173.

³³ DAREDEVIL EPIC, *supra* note 11, at 17.

³⁴ *Id.* at 4.

³⁵ “Poor Matt Murdock!” worries Karen in Volume 2. *Id.* at 36. “He’s so handsome...so intelligent...so doggone wonderful! I’d marry him in a minute even though he’s blind...if only he’d ask me!” *Id.*

³⁶ *Id.* at 18.

³⁷ *Id.* at 6–9, 19.

³⁸ *Id.* at 26.

³⁹ *Id.* at 26–27.

So ends the first comic, containing the core of the origin story to which Marvel's 2015–2016 television series largely adheres, though the original contains little of the current series' angst or meaningful character development. Like other comic heroes of the era, the original Daredevil does not kill, but nor does he ponder that choice. Instead, he is a cocky 'good guy' among starkly bad ones, and it is the bad guys who kill—or, more accurately, who try to. The good guys put the bad guys in jail. There is little gray.

B. Frank Miller's Reimagining

Frank Miller joined the authorship of Daredevil as penciller for issue number 158 (May 1979).⁴⁰ From the beginning, his influence was more than merely artwork,⁴¹ and he would become the writer ten issues later.⁴² Issue number 164 reimagined the origin story,⁴³ and later issues introduced a mysterious, blind martial arts instructor who goes by the name of Stick and a college romantic interest who is also more than meets the eye, Elektra Natchios.⁴⁴ The tone is darker than Stan Lee's original, and the story less playful but more compelling.⁴⁵

⁴⁰ *Creators: Artists – Vol. 1*, DAREDEVIL: THE MAN WITHOUT FEAR (May 21, 2017, 1:36 PM), <http://www.manwithoutfear.com/daredevil-artists-volume-1-sorted-alphabetical.shtml> [https://perma.cc/N3SZ-V6T3]; FRANK MILLER & KLAUS JANSON, DAREDEVIL VOL. 1, 42–43 (2008) [hereinafter FRANK MILLER DAREDEVIL VOL. 1]. Miller had previously worked on two issues of Spider Man that included the character Daredevil, numbers 27 and 28. See FRANK MILLER DAREDEVIL VOL. 1, *supra* note 40, at 5–6, 23–24.

The *penciller* takes the first steps in rendering a storyline in visual form, whereas the *inker* will later add depth and shadow. Depending upon the writer, the penciller can have greater or lesser impact on the story itself. See Aaron Albert, *How to Become a Comic Book Penciller*, THOUGHTCO. (Mar. 11, 2017), <https://www.thoughtco.com/how-to-be-a-comic-book-penciller-804200> [https://perma.cc/6B52-NUZQ].

⁴¹ See Creighton Blinn, *The Lasting Resonance of Frank Miller's Daredevil*, NOTHING BUT COMICS (Apr. 6, 2015), <https://nothingbutcomics.net/2015/04/06/the-lasting-resonance-of-frank-millers-daredevil/> [https://perma.cc/Z6FH-3L9K].

⁴² *Creators: Writers – Vol. 1*, DAREDEVIL: THE MAN WITHOUT FEAR (May 22, 2017, 5:00 PM), <http://www.manwithoutfear.com/daredevil-writers-volume-1-sorted-alphabetical.shtml> [https://perma.cc/T3CC-39KR]; FRANK MILLER DAREDEVIL VOL. 1, *supra* note 40, at 215–16. Miller previously co-wrote issues 165 and 166. See FRANK MILLER DAREDEVIL VOL. 1, *supra* note 40, at 155–56, 173–74.

⁴³ FRANK MILLER DAREDEVIL VOL. 1, *supra* note 40, at 135–36.

⁴⁴ *Characters: Daredevil Characters – Vol. 1*, DAREDEVIL: THE MAN WITHOUT FEAR (May 20, 2017, 12:41 PM), <http://www.manwithoutfear.com/daredevil-characters-volume-1.shtml> [https://perma.cc/9WYL-5WSV]; FRANK MILLER DAREDEVIL VOL. 1, *supra* note 40, at 215, 221–27 (Issue 168); FRANK MILLER & KLAUS JANSON, DAREDEVIL VOL. 2, 72, 87–88, 94–99 (2008) [hereinafter FRANK MILLER DAREDEVIL VOL. 2] (Issues 176 and 177).

⁴⁵ This is true even in details of the artwork and story. For example, when boxer Jack Murdock signs with the Fixer, his contract is dropped to the floor and he is forced to sign on his knees. FRANK MILLER DAREDEVIL VOL. 1, *supra* note 40, at 140–41.

Most important to this article, Miller developed Daredevil into a character with meaningful inner conflict. For example, in issue number 169, Daredevil has been battling Bullseye, who is suffering from hallucinations caused by a terminal—but operable—brain tumor.⁴⁶ A violent struggle leaves Bullseye unconscious on the subway tracks.⁴⁷ Daredevil, himself injured in the fight, hears a train approaching but debates whether Bullseye is worth saving: “You deserve to die, Bullseye...You’d just kill again...I hate you.”⁴⁸ Daredevil nonetheless lifts Bullseye to safety and gets him to a hospital for treatment.⁴⁹

There, a police detective berates Daredevil for saving a killer, who will only be released to kill again when his tumor is removed and he is able to blame his crimes on its effects.⁵⁰ Daredevil is torn, but hopes he has done the right thing:

[M]en like Bullseye would rule the world—were it not for a structure of *laws* that society has created to keep such men in check. The moment one man takes another man’s life in his own hands, he is rejecting the law—and working to destroy that structure. If Bullseye is a menace to society, it is society that must make him pay the price, not you, and not me. I—I wanted him to die, Nick. I detest what he does...what he *is*. But I’m not God—I’m not the law—and I’m not a murderer.⁵¹

The detective, Nick, was not convinced.⁵²

Frank Miller was also responsible for highlighting Daredevil’s Catholicism.⁵³ In Miller’s words, “[a]long the way, I decided [Daredevil] needed to be Catholic because only a Catholic could be a vigilante and an attorney at the same time.”⁵⁴ That Catholicism not only enabled Miller to play off of Daredevil’s continual inner conflict, but also to portray him as a broken, sinning hero reborn.⁵⁵ Again in Miller’s words, “he really is a flawed hero, in that he’s a man who intends to do good and causes much damage. Matt should have been a villain. He had a

⁴⁶ *Id.* at 245.

⁴⁷ *Id.* at 258–59.

⁴⁸ *Id.* at 259.

⁴⁹ *Id.* at 259–60.

⁵⁰ *Id.* at 260.

⁵¹ *Id.*

⁵² *Id.* “He’s gonna go free. He’s gonna kill again. And next time it’ll be your fault.” *Id.* Daredevil similarly refuses to kill Dr. Octopus in issue 165. *Id.* at 171.

⁵³ See Charles Moss, *Daredevil’s Greatest Superpower Is His Catholicism*, SLATE (Apr. 10, 2015, 10:20 AM), http://www.slate.com/articles/arts/culturebox/2015/04/netflix_s_daredevil_show_understands_that_catholicism_is_the_superhero_s.html [https://perma.cc/4UT2-G7AH].

⁵⁴ *Id.*

⁵⁵ *Id.*

horrible childhood, his romantic life was the worst...but somehow he redeems himself and moves ahead. He just doesn't give up."⁵⁶

C. *The Punisher*

Because he plays Murdock's foil in the second season of the recent television series, we also need to know about Frank Castle, who becomes the Punisher. The character was first introduced as an antagonist to Spider Man in 1974, an ex-marine who "kill[s] only those who deserve killing," but who mistakenly thinks Spider Man is among that lot before the web-slinger sets him straight.⁵⁷ In 1975, Punisher obtained a backstory. After serving three tours in Vietnam, Castle was enjoying a normal day with his wife and two kids in Central Park when the family stumbled upon a mob hit.⁵⁸ Only Frank Castle survived, and when it becomes apparent that the criminal justice system is too corrupt to see justice done, Castle decides to see to it himself.⁵⁹

Frank Miller included the character in *Daredevil* issue 182 (1982), in which Castle is introduced doing time in Ryker's Island.⁶⁰ He is soon released by a frustrated government agent wanting help in foiling a drug shipment.⁶¹ Naturally, Castle obliges, killing the criminals and refusing any attempt at surrender.⁶² Punisher offers to team up with Daredevil, considering him a natural ally in his fight against crime, but, of course, that is not to be: "Whether you kill innocents or criminals," argues Daredevil, "it's *murder*—and that makes *us* enemies."⁶³ But even Daredevil respects Frank's limits: "You've killed *dozens* of criminals in your time, but you've never harmed an innocent. You won't kill me."⁶⁴

⁵⁶ *Id.*

⁵⁷ *The Punisher Strikes Twice!*, THE AMAZING SPIDER-MAN #129, at 1 (Marvel Comics Feb. 1974). Oddly enough, Punisher returns in issues 135 and 161 only to make the same mistake. See *Shoot-Out in Central Park!*, THE AMAZING SPIDER-MAN #135, MARVEL COMICS DATABASE (Aug. 1974), http://marvel.wikia.com/wiki/Amazing_Spider-Man_Vol_1_135 [https://perma.cc/FPT3-KWWT]; *...And the Nightcrawler Came Prowling, Prowling*, THE AMAZING SPIDER-MAN #161, MARVEL COMICS DATABASE (Oct. 1976), http://marvel.wikia.com/wiki/Amazing_Spider-Man_Vol_1_161 [https://perma.cc/9HSJ-FTQ4].

⁵⁸ See Blair Marnell, *The Punisher: Origins and Evolutions*, COMINGSOON, <http://www.comingsoon.net/movies/features/453335-the-punisher-origins-and-evolutions> [https://perma.cc/3GDC-2Y3G] (last visited Oct. 26, 2016) (describing MARVEL PREVIEW Issue 2 (1975)).

⁵⁹ *Id.* This same backstory is used in 1986 when Punisher gets his own brief run. See *Circle of Blood*, THE PUNISHER #1, MARVEL COMICS DATABASE (Jan. 1986), http://marvel.wikia.com/wiki/Punisher_Vol_1_1 [https://perma.cc/3SP3-5NE3].

⁶⁰ FRANK MILLER DAREDEVIL VOL. 2, *supra* note 44, at 228.

⁶¹ *Id.* at 230.

⁶² *Id.* at 242–43.

⁶³ *Id.* at 262.

⁶⁴ *Id.* at 289.

Worthy of brief mention is a special single issue comic released in November 1995 entitled *Punisher Kills the Marvel Universe*.⁶⁵ In this alternative telling, Castle's family is killed as collateral damage in the war between superheroes and villains,⁶⁶ so Frank Castle kills each and every one of them, periodically defended by attorney Matt Murdock.⁶⁷ All except one, that is, setting up the final showdown, in which Punisher fatally stabs Daredevil.⁶⁸ Daredevil removes his mask, revealing his alternate identity to Castle's astonishment, and in his last breaths, Murdock explains, "There's—always someone—under the mask, Frank—but you killed us all."⁶⁹ Only that's not quite true, and so Castle puts his gun to his own head—"There's one more to go"—and finishes the job he started.⁷⁰

D. *The 2015–2016 Daredevil*

1. Season One (2015)

The 2015–2016 (and continuing) television series is rich and enjoyable, and I highly recommend it. Indeed, if you have not seen it, a significant part of me thinks you should stop reading this now and return after you have. After all, it is a cardinal sin in my household—requiring great penance—to untimely reveal *any aspect* of a worthwhile book or movie, let alone to entirely spoil the plot. (I tremble to think what any of my daughters would require were I to cross *that* line.) However, if you wander off to Netflix, you may never return; another significant part of me is pleasantly surprised to find you here in the first place. So, read on intrepid reader, but understand that the following contains spoilers, even as it omits all of the rich detail in attempting brevity.

Daredevil's origin story is much like the Stan Lee original but with Frank Miller's additions. Murdock is raised by his father, boxer Battlin' Jack Murdock,⁷¹

⁶⁵ *Punisher Kills the Marvel Universe*, THE PUNISHER #1 (Marvel Comics Nov. 1995) http://readcomicbooksonline.net/reader/Punisher_Kills_The_Marvel_Universe/Punisher_Kills_The_Marvel_Universe/1 [<https://perma.cc/56J3-L9MD>].

⁶⁶ *Id.* at 2–4.

⁶⁷ *Id.* at 4–38.

⁶⁸ *Id.* at 42–43.

⁶⁹ *Id.* at 43.

⁷⁰ *Id.*

⁷¹ *Daredevil: Cut Man* (Netflix Apr. 10, 2015) at 2. Transcripts for the first two seasons of the series used to be found at *Daredevil Transcripts*, FOREVER DREAMING DATABASE, <http://transcripts.foreverdreaming.org/viewforum.php?f=270> [<https://perma.cc/PSSJ-6MJ7>], and are now on file with the author. Page citations will cite to those transcripts, referencing the page number of the respective printed transcript as saved in PDF format (here page 2). Sometimes critical action occurs without any accompanying words, in which case the page citation will nonetheless be provided because it identifies the proper location within the episode. And because punctuation was the product of transcriber 'bunniefuu,' I have sometimes altered that punctuation to be more true to what I hear in the visual series or simply to match my own punctuating tastes.

and he loses his sight at age nine when he saves a man from an oncoming truck only to suffer toxic chemicals in his eyes.⁷² The young Murdock is pressed to favor intellectual education over physical, and this time he takes a keen interest in the civil rights icon and eminent jurist Thurgood Marshall.⁷³ His father Jack is killed when he defies his crooked promoter,⁷⁴ after which Matt is sent to an orphanage where he encounters serious difficulties with his now-heightened senses until the arrival and training of the mysterious Stick.⁷⁵ Of particular note for legal geeks is Matt's ability to detect the human heartbeat as an infallible lie detector, which would present a fun Fourth Amendment issue were he to take a job with the state.⁷⁶

Stick trains Murdock but leaves abruptly when the young boy makes him a small gift—Stick is looking for a warrior and doesn't want emotional attachments—leaving Matt to complete his education on his own, both the scholarly and the more physical variety.⁷⁷ Naturally, Matt excels at both, soon at Columbia with new roommate Franklin 'Foggy' Nelson, both of whom graduate with honors.⁷⁸ That leaves them with prestigious, high paying opportunities, but their sense of justice leads elsewhere—to setting up their own shingle, forming Nelson & Murdock.⁷⁹

The young attorneys are without clients, but Nelson takes to bribing a young police sergeant named Brett Mahoney, whom he has known since childhood (if providing cigars for Mahoney's mother can be termed a 'bribe'—a friendly nudge, perhaps).⁸⁰ That leads to Nelson & Murdock finding and successfully defending Karen Page, who thereafter becomes the office assistant for the fledgling law firm and the duo's fast friend.⁸¹

⁷² *Daredevil: Into the Ring* (Netflix Apr. 10, 2015) at 1–2.

⁷³ *Daredevil: Cut Man*, *supra* note 71, at 12–13, 21.

⁷⁴ *Id.* at 22–23, 28–29.

⁷⁵ *Daredevil: Stick* (Netflix Apr. 10, 2015) at 6–7. Matt later describes his enhanced senses this way: "I guess you have to think of it as more than just five senses. I can't see, not like everyone else, but I can feel. Things like balance and direction. Micro-changes in air density, vibrations, blankets of temperature variations. Mix all that with what I hear, subtle smells. All of the fragments form a sort of impressionistic painting." *Daredevil: World on Fire* (Netflix Apr. 10, 2015) at 2.

⁷⁶ See *Daredevil: Cut Man*, *supra* note 71, at 8; *Daredevil: In the Blood* (Netflix Apr. 10, 2015) at 4; *Daredevil: World on Fire*, *supra* note 75, at 2; JAMES E. DAILY & RYAN M. DAVIDSON, *THE LAW OF SUPERHEROES* 97–98 (2012); *Kyllo v. United States*, 533 U.S. 27 (2001) (holding thermal imaging of a home to constitute a Fourth Amendment search). For his part, Foggy Nelson just finds this creepy: "You listened to her heartbeat without her permission? We're lawyers! You can't do that! There's a system in place, and it's weird and invasive." *Daredevil: Nelson v. Murdock*, *supra* note 1, at 11.

⁷⁷ *Daredevil: Stick*, *supra* note 75, at 9–10, 15–17, 24–25.

⁷⁸ *Daredevil: Nelson v. Murdock*, *supra* note 1, at 1–4, 12.

⁷⁹ *Id.* at 21–23, 32.

⁸⁰ *Daredevil: Into the Ring*, *supra* note 72, at 5–6, 9.

⁸¹ *Id.* at 8, 10–11, 14, 25.

Meanwhile, behind the scenes, Wilson Fisk (to become the ‘Kingpin’) has been building a criminal empire under the delusion that he can ultimately rebuild the troubled Hell’s Kitchen into a model city.⁸² Fisk has put together a team of diverse criminals: the Chinese under Madam Gao provide high quality heroin, the Russians under Vladimir and Anatoly Ranskahov distribute the drug (as well as engage in human trafficking), the Japanese under Nobu Yoshioka play a mysterious role and are primarily interested in acquiring certain real estate, and financial wizard Leland Owlsley handles the money.⁸³ Fisk has bought off a large part of the police force and the media,⁸⁴ and gains the personal support of the beautiful Vanessa Marianna.⁸⁵

Like Fisk, Matt Murdock has begun extra-legal activities of his own. Spurred by the inability or unwillingness of the system to protect a young girl against her father’s repeated sexual assaults, Murdock dons a cloth mask and savagely beats and threatens the father.⁸⁶ This ‘success’ encourages Murdock to continue meting out ‘justice,’ and he becomes “the man in the mask.”⁸⁷ During one of his encounters with the Russians, he is nearly mortally wounded and is saved only by the intervention of a nurse who connects his broken body with stories of a benevolent vigilante.⁸⁸ That nurse, Claire Temple, continues to provide much-needed medical assistance as Murdock’s escapades continue.⁸⁹

Through a series of complicated maneuvers, Fisk continues expanding his criminal enterprise and repeatedly comes to the attention not only of the vigilante Murdock, but also of Nelson & Murdock. In one of the most important connections, Fisk tries to strong-arm residents out of their apartments, symbolized

⁸² *Daredevil: World on Fire*, *supra* note 75, at 23–24.

⁸³ *Daredevil: Into the Ring*, *supra* note 72 at 20; *Daredevil: Shadows in the Glass* (Netflix Apr. 10, 2015) at 5; *Daredevil: Speak of the Devil* (Netflix Apr. 10, 2015) at 7–8. Owlsley is a unique name because the character is loosely based on a financial wizard that Daredevil fights in the original comic issue #3, The Owl. See *Daredevil* #3, DAREDEVIL: THE MAN WITHOUT FEAR (May 20, 2017, 12:42 PM), <http://www.manwithoutfear.com/daredevil-volume-1/issue/3> [https://perma.cc/YT8Z-3A7F]. As for the racial/geographic classifications, they make me uncomfortable but I decided it was best to stick with the terminology of the series.

⁸⁴ *Daredevil: Condemned* (Netflix Apr. 10, 2015) at 25; *Daredevil: Daredevil* (Netflix Apr. 10, 2015) at 3. “I’ve taken money, a lot of money, to do things for...for Fisk. I’m not the only one. There’s cops, lawyers, judges...at least one senator I know of.” *Daredevil: Daredevil* (Netflix Apr. 10, 2015) at 16.

⁸⁵ *Daredevil: In the Blood*, *supra* note 76, at 22–23; *Daredevil: World on Fire*, *supra* note 75, at 18, 22–24.

⁸⁶ *Daredevil: Nelson v. Murdock*, *supra* note 1, at 24–25.

⁸⁷ *Id.* at 7.

⁸⁸ *Daredevil: Cut Man*, *supra* note 71, at 6–12, 19–20.

⁸⁹ *Daredevil: In the Blood*, *supra* note 76, at 2–4; *Daredevil: The Path of the Righteous* (Netflix Apr. 10, 2015) at 8–10. Claire Temple will be the tie that binds several Marvel characters in the upcoming *The Defenders*. See *Claire Temple (Marvel Cinematic Universe)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Claire_Temple_\(Marvel_Cinematic_Universe\)](https://en.wikipedia.org/wiki/Claire_Temple_(Marvel_Cinematic_Universe)) [https://perma.cc/5ZQD-QE2B] (last visited July 18, 2017).

by the resilient Elena Cardenas.⁹⁰ Fisk ultimately kills Cardenas in a successful effort to draw Murdock into a fight with the ninja Nobu.⁹¹ Fisk also kills the Russian syndicate in a series of simultaneous bombings,⁹² and when reporter Ben Urich closes in on revealing his identity, Fisk goes public as a benevolent reformer.⁹³

Ultimately, however, thanks in no small part to the man in the mask, Fisk's alliances crumble and his criminality is outed by Sergeant Mahoney.⁹⁴ The FBI moves in and Fisk is arrested, but he has of course planned for this eventuality,⁹⁵ leading to the final season confrontation with Murdock, who has now acquired a new suit and accompanying identity—Daredevil.⁹⁶ Daredevil defeats Fisk and turns him over to Officer Mahoney, who dutifully files a report giving credit to the vigilante.⁹⁷

2. Season Two (2016)

Season Two opens with Daredevil continuing as the vigilante, saving several lives;⁹⁸ with Nelson & Murdock broke but managing to stay open for clients who can pay only in bartered baked goods;⁹⁹ and with newcomer Punisher beginning to exact his 'justice,' first on the Dogs of Hell motorcycle club, then on the Kitchen Irish mob, and then on the Mexican cartel.¹⁰⁰ Unfortunately, Fisk's downfall has not solved the crime problems of Hell's Kitchen, but instead has merely encouraged others to fight to fill the void.¹⁰¹

Punisher's backstory is pieced together slowly and poignantly, mostly thanks to Karen Page who—goaded by skeletons in her own mysterious past—figures that “humans are a pretty complicated species,” meaning that “there's gotta be more to the story.”¹⁰² She is assisted in that quest by an assistant district attorney who

⁹⁰ *Daredevil: World on Fire*, *supra* note 75, at 8–10.

⁹¹ *Daredevil: Speak of the Devil*, *supra* note 83, at 17–18, 23–26.

⁹² *Daredevil: World on Fire*, *supra* note 75, at 26–28.

⁹³ *Daredevil: Shadows in the Glass*, *supra* note 83, at 28–29; *Daredevil: Speak of the Devil*, *supra* note 83, at 6.

⁹⁴ *Daredevil: Daredevil*, *supra* note 84, at 14–16.

⁹⁵ *Id.* at 16–17.

⁹⁶ *Id.* at 23–24.

⁹⁷ *Id.*

⁹⁸ *Daredevil: Bang* (Netflix Mar. 18, 2016) at 1–3, 6.

⁹⁹ *Id.* at 7–8.

¹⁰⁰ *Id.* at 10–11, 25–26; *see also Daredevil: Dogs to a Gunfight* (Netflix Mar. 18, 2016) at 3. As noted earlier, I am uncomfortable using the geographic and racial classifications, but decided it was best to stick with the terminology of the series.

¹⁰¹ *Daredevil: Bang*, *supra* note 98, at 10.

¹⁰² *Daredevil: Penny and Dime* (Netflix Mar. 18, 2016) at 9.

surreptitiously provides files,¹⁰³ and by her new boss when she takes a job as a reporter for the *New York Bulletin*.¹⁰⁴

Like in his comic origins, Punisher is a war hero whose family was gunned down, this time during a visit to the carousel in Central Park.¹⁰⁵ Three criminal gangs were convening for a meeting set by a new distributor of high-quality heroin, known as the Blacksmith; the shooting started when the Blacksmith failed to show and somebody got nervous.¹⁰⁶ Although the government had infiltrated the meet, it did not clear the park of civilians for fear it would reveal this very fact, and thus the DA and others worked afterwards to cover up the deaths of the Castle family.¹⁰⁷ The Blacksmith proves to be none other than Castle's former Colonel, Ray Schoonover, whom Castle executes in the second-to-last episode.¹⁰⁸

Long before that, Daredevil and Punisher begin to butt heads,¹⁰⁹ including in a terrific scene in which they debate whether criminal Elliot Grote should be summarily executed—itsself modeled upon a classic Punisher comic.¹¹⁰ But they also join forces, as when Daredevil helps Punisher escape from the clutches of the Irish (Punisher temporarily stops killing in order to oblige “altar boy” Daredevil).¹¹¹ And it is here that Daredevil modifies his relationship with the police and in particular Officer Mahoney: Daredevil insists that the department must take credit for Punisher's apprehension to give people faith in the system, and Mahoney complies, filing a false report that results in his being promoted to detective.¹¹²

Murdock's personal life is upended when his former lover, Elektra Natchios, appears, the two not having seen each other for ten years¹¹³ (though, we learn, she too was raised and tutored by Stick).¹¹⁴ She has come to Hell's Kitchen to solve a mystery of the Yakuza—the Japanese mafia under Nobu—and she uses her money,

¹⁰³ *Daredevil: New York's Finest* (Netflix Mar. 18, 2016) at 19–21.

¹⁰⁴ *Daredevil: Seven Minutes in Heaven* (Netflix Mar. 18, 2016) at 20.

¹⁰⁵ *Daredevil: Penny and Dime*, *supra* note 102, at 23–26; *Daredevil: Kinbaku* (Netflix Mar. 18, 2016) at 22; *Daredevil: Regrets Only* (Netflix Mar. 18, 2016) at 20–21.

¹⁰⁶ *Daredevil: Seven Minutes in Heaven*, *supra* note 104, at 22–23.

¹⁰⁷ *Daredevil: The Man in the Box* (Netflix Mar. 18, 2016) at 9–11, 13.

¹⁰⁸ *Daredevil: The Dark at the End of the Tunnel* (Netflix Mar. 18, 2016) at 17–18, 25–26.

¹⁰⁹ E.g., *Daredevil: Bang*, *supra* note 98, at 29; *Daredevil: Dogs to a Gunfight*, *supra* note 100, at 26–27.

¹¹⁰ *Daredevil: New York's Finest*, *supra* note 103, at 3–4, 10–11, 16–19, 23–29; *The Devil by the Horns*, THE PUNISHER #3, MARVEL COMICS DATABASE (June 2000), http://marvel.wikia.com/wiki/Punisher_Vol_4_3 [<https://perma.cc/3B8W-2TLS>].

¹¹¹ *Daredevil: Penny and Dime*, *supra* note 102, at 21.

¹¹² *Id.* at 26–27; *Daredevil: Regrets Only*, *supra* note 105, at 10.

¹¹³ *Daredevil: Penny and Dime*, *supra* note 102, at 30; *Daredevil: Kinbaku*, *supra* note 105, at 1, 35.

¹¹⁴ *Daredevil: Guilty as Sin* (Netflix Mar. 18, 2016) at 6, 13, 17; *Daredevil: The Dark at the End of the Tunnel*, *supra* note 108, at 1–3, 20.

charm, and wit to quickly enmesh Matt as her partner.¹¹⁵ We learn why the Yakuza wanted Fisk to acquire that real estate in Season One, as they dig a huge hole some forty stories deep to extract an ancient coffin.¹¹⁶ Elektra, Stick, and Murdock variously bicker and team up to defeat this foe, both of which are enjoyable to watch until the final battle results in the deaths of Nobu (good riddance) and Elektra (sad), with Punisher providing critical assistance in the end.¹¹⁷

But Elektra's story seems far from over. She has been revealed to be a mysterious, never-yet-launched weapon known as a Black Sky, and the remaining Yakuza dig up her grave and place her body within the ancient coffin.¹¹⁸ As for the rest of the heroes, they have each come to terms with him- or herself. Foggy Nelson realizes he is a talented attorney, mulls a lucrative offer from the prominent firm Hogarth,¹¹⁹ and ceremonially closes the friends' longstanding tab at Josie's bar.¹²⁰ Castle torches his home to bring closure to his former life of loving husband and father, fully embracing his new life as Punisher (and yes, he spray-paints that cool skull shirt in the process).¹²¹ Karen Page directs her courage and formidable talents to investigative journalism.¹²² And Murdock makes peace with his soulmate Elektra,¹²³ and finally comes clean with Page in the Season's closing words: "I'm Daredevil."¹²⁴

¹¹⁵ *Daredevil: Kinbaku*, *supra* note 105, at 36–37; *Daredevil: Regrets Only*, *supra* note 105, at 1–4.

¹¹⁶ *Daredevil: Semper Fidelis*, *supra* note 2, at 25, 32; *Daredevil: Guilty as Sin*, *supra* note 114, at 1. At least this appeared to be the purpose for digging the hole from the *Daredevil* series. In *The Defenders* it takes on a further sinister role. *The Defenders: Ashes, Ashes* (Netflix Aug. 18, 2017).

¹¹⁷ *Daredevil: A Cold Day in Hell's Kitchen* (Netflix Mar. 18, 2016) at 20–21.

¹¹⁸ *Daredevil: Guilty as Sin*, *supra* note 114, at 10–12; *Daredevil: The Dark at the End of the Tunnel*, *supra* note 108, at 21; *Daredevil: A Cold Day in Hell's Kitchen*, *supra* note 117, at 26.

¹¹⁹ *Daredevil: A Cold Day in Hell's Kitchen*, *supra* note 117, at 4–5. Jeri Hogarth is another link to the heroes who will join together in *The Defenders*. See *Jeri Hogarth*, MARVEL CINEMATIC UNIVERSE DATABASE, http://marvelcinematicuniverse.wikia.com/wiki/Jeri_Hogarth [https://perma.cc/YJ5L-MBFY] (last visited July 18, 2017).

¹²⁰ *Daredevil: A Cold Day in Hell's Kitchen*, *supra* note 117, at 24.

¹²¹ *Id.* at 26.

¹²² *Id.* at 24–25.

¹²³ *Id.* at 18. "Elektra, this is a part of me that I need. And you're the only one who gets it. Without this, I'm not alive. I'm not. Not really. And I know that now, thanks to you. . . . I'm free with you. Like with no one else." *Id.*

¹²⁴ *Id.* at 26.

III. *DAREDEVIL* THEMESA. *Humanity*

Seeing as the early comics were ‘guilty’ of making the good guys good and the bad guys bad, we have certainly come a long way. The villains of the 2015–2016 *Daredevil* television series (which going forward I will simply reference as *Daredevil*) tend to demonstrate a humanity worthy of some respect, and thus worthy of trying to salvage, which plays into Murdock’s sense of rehabilitative justice. And Murdock himself constantly reminds the viewer that he is hardly a saint—instead, he is forever in peril of ‘breaking bad.’

In the very first episode of the series, we find Murdock in the Catholic Sacrament of Penance.¹²⁵ Only Murdock is not doing it quite right. He is “not seeking penance for what [he’s] done,” but rather “asking forgiveness for what [he’s] about to do.”¹²⁶ Murdock is fixated on his newfound understanding of his dad’s ability to “let the devil out” in the ring, when “something inside of him would snap.”¹²⁷

Thus, from the beginning of his vigilante career—the viewer next sees Murdock saving victims of human trafficking¹²⁸—Murdock is well aware of the devil inside him. Like his father, he is all too capable of *enjoying* the violence he metes out, and his friends warn against this. Nurse Claire Temple distances herself for just this reason: “I just don’t think I can let myself fall in love with someone who’s so damn close to becoming what he hates.”¹²⁹ Foggy Nelson, his longtime friend and law partner, directly questions Murdock’s motives after hearing him describe his first vigilante act:

You say all this, like one day you’d just had it with how things are. But to do what you do...you had to keep training, all those years since that Stick guy, knowing you would do something like this. Maybe it isn’t only about justice, Matt. Maybe it’s about you having an excuse to hit someone. Maybe you just can’t stop yourself.¹³⁰

To which Murdock frankly responds, “I don’t want to stop.”¹³¹

¹²⁵ *Daredevil: Into the Ring*, *supra* note 72, at 2–3.

¹²⁶ *Id.* at 3.

¹²⁷ *Id.* at 2–3.

¹²⁸ *Id.* at 3–4.

¹²⁹ *Daredevil: World on Fire*, *supra* note 75, at 22.

¹³⁰ *Daredevil: Nelson v. Murdock*, *supra* note 1, at 25.

¹³¹ *Id.* Which is why Murdock will ultimately pledge himself to Elektra—he does not share her lust for killing, but he has an equal lust for being a vigilante, and she is the only person with whom he can share that without feeling judged. *Daredevil: A Cold Day in Hell’s Kitchen*, *supra* note 117, at 17–18.

Thus, to Frank Castle, “Sometimes I think [Murdock] really just might be the devil.”¹³² To Elektra Natchios, “There was always this glorious darkness inside [Murdock].”¹³³ And to priest Father Lantom, a wonderful character who sees through Murdock and much else, violence is ingrained in him: “Probably for the best, already had four cups. Decaf. But you know there’s still a bit of caffeine in there they just can’t get out. Some things are just...too ingrained, I guess.”¹³⁴ So, Murdock will not kill—he sets an outer limit¹³⁵—but he enjoys meting out self-defined justice with his fists and constantly doubts whether he remains the good guy.¹³⁶

On the other side, most everyone in *Daredevil* is given a story and, as Bryan Stevenson poignantly reminds us about the real world, nobody is as bad as the worst thing they have done.¹³⁷ Thus, the Russian syndicate distributing heroin and running human trafficking—the latter obviously a most serious crime—is run by brothers Anatoly and Vladimir Ranskahov. They escaped years of torture in a Russian prison,¹³⁸ and came to New York at Vladimir’s urging.¹³⁹ When they find themselves in too deep, Anatoly urges a change of course: “We’ve lost our way in this land of riches.”¹⁴⁰ Ultimately, bested by Daredevil, Anatoly convinces the angrier Vladimir (“I will not bow before that man!”) that it is time to seek help offered by Wilson Fisk: “Then I will go. And bow for both of us.”¹⁴¹ That does not go well, but there is obvious humanity in familial love, and Vladimir ultimately sacrifices himself so Daredevil can escape from Fisk’s grasp.¹⁴²

¹³² *Daredevil: Penny and Dime*, *supra* note 102, at 22.

¹³³ *Daredevil: Kinbaku*, *supra* note 105, at 36.

¹³⁴ *Daredevil: The Path of the Righteous*, *supra* note 89, at 15.

¹³⁵ See, e.g., *Daredevil: Stick*, *supra* note 75, at 18–19 (showing Murdock debate his limiting principle with Stick); *Daredevil: Nelson v. Murdock*, *supra* note 1, at 20 (showing Murdock confirm that he has never killed, though he has wanted to). Of course, in his line of work, even one with superhuman senses will end up causing deaths, as when during one of his attacks a criminal is killed by an errant bullet fired by another. See *Daredevil: World on Fire*, *supra* note 75, at 7.

¹³⁶ See, e.g., *Daredevil: Rabbit in a Snow Storm* (Netflix Apr. 10, 2015) at 20–21. Murdock becomes distracted during a trial’s closing arguments when he gets too near his own moral quandary: “I’ve been preoccupied of late with, uh, questions of morality. Of right and wrong. Good and evil. Sometimes the delineation between the two is a sharp line. Sometimes it’s a blur.” *Id.* at 20. Similarly, in Episode 13 of the first season of *Jessica Jones*, a companion series, Claire Temple confides that Murdock is not sure he *is* the good guy: “He questions every move he makes. Every thought he has.” *Marvel’s Jessica Jones*, SPRINGFIELD! SPRINGFIELD! DATABASE, http://www.springfieldspringfield.co.uk/view_episode_scripts.php?tv-show=marvels-jessica-jones-2015&episode=s01e13 [https://perma.cc/7EDV-A6JW] (last visited Sept. 2, 2017).

¹³⁷ See BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION 17–18 (2014) (“Each of us is more than the worst thing we’ve ever done.”).

¹³⁸ *Daredevil: In the Blood*, *supra* note 76, at 1.

¹³⁹ *Id.* at 2.

¹⁴⁰ *Id.* at 9.

¹⁴¹ *Id.* at 22.

¹⁴² *Daredevil: Condemned*, *supra* note 84, at 25–26.

Nobody in the series is more ruthless and delusional than Wilson Fisk, but he too is capable of love and deserving of some compassion. He was raised in a home dominated by an abusive father where he was ridiculed for his weight; indeed, he escaped only by killing his father as the latter was beating Fisk's mother.¹⁴³ He is haunted by nightmares of that deed and questions whether he has become just like his old man.¹⁴⁴ Unfortunately, in his deeds, Fisk knows no limits—he is just what Murdock fears he could himself become. Thus, while Fisk genuinely loves Vanessa, when she is poisoned, he instructs his confidant to find those who did her wrong: "I want to look in their eyes when I salt the earth with their blood."¹⁴⁵ While she is in a coma he makes her this promise: "I can't pray for you. All I can do is make you a promise. One that not even God, if there is such a thing, can prevent me from keeping. The people that did this to you...they will suffer. They will suffer."¹⁴⁶ Hardly the stuff of good romance. And when he soon thereafter finds his trusted advisor and friend has been killed, Fisk first demonstrates some commendable emotion, but then just as quickly turns to savagely beating the underling who had only the most tangential relation to the death.¹⁴⁷

In sum, that both Fisk and the Ranskahov brothers were formed by torture hardly excuses their ultimately very serious crimes. But it does perhaps partially temper their desert and give some hope that such a person could perhaps be rehabilitated. This notion is essential to Matt Murdock; after all, he too might one day cross that line.¹⁴⁸

B. Legal Accuracy

Even in fiction, legal accuracy has value. After all, for many Americans, their conception of our justice system is surely shaped largely by fiction. Thus, as others have argued, why *not* make television accurate when accuracy does not detract from the story-telling and drama?¹⁴⁹ Fortunately, we have come a long way

¹⁴³ *Daredevil: Shadows in the Glass*, *supra* note 83, at 16, 20, 22–23.

¹⁴⁴ *Id.* at 24.

¹⁴⁵ *Daredevil: The Path of the Righteous*, *supra* note 89, at 13.

¹⁴⁶ *Id.* at 25.

¹⁴⁷ *Daredevil: The Ones We Leave Behind* (Netflix Apr. 10, 2015) at 7.

¹⁴⁸ There are plenty more examples that I will spare the reader, including Karen Page, who has something dark in her own past that is often referenced (*see, e.g., Daredevil: In the Blood*, *supra* note 76, at 8; *Daredevil: The Path of the Righteous*, *supra* note 89, at 29; *Daredevil: The Ones We Leave Behind*, *supra* note 147, at 12; *Daredevil: Seven Minutes in Heaven*, *supra* note 104, at 26), and criminal Elliot Grote, who attended church every Sunday, often placing his ill-gotten gains in the collection plate (*see Daredevil: Penny and Dime*, *supra* note 102, at 5–6).

¹⁴⁹ *See, e.g.,* Alex Bunin, "The Night Of" Ends ... Kinda, MIMESIS LAW (Sept. 6, 2016), <http://mimesislaw.com/fault-lines/the-night-of-ends-kinda/12523> [https://perma.cc/9NSL-4FPZ] (complaining about legal inaccuracies in HBO's *The Night Of*, which is another terrific drama).

from *Perry Mason* to *Better Call Saul*,¹⁵⁰ and when it comes to legal accuracy, *Daredevil* largely satisfies.

Before mentioning a few aspects the series gets right, it is necessary to note—for the comic devotee—that Stan Lee’s original was just terrible in this regard. Not only did he have a couple of college (not law school) graduates open their own firm,¹⁵¹ and a police officer seem to issue a writ of habeas corpus in order to end an interrogation for the day,¹⁵² but, in issue seven, the law becomes truly unhinged. Murdock, “possibly the most brilliant trial lawyer of his generation,” attempts to file a civil countersuit as part of a criminal prosecution: “Your honor, before this trial begins, my client wishes to file a *counter-charge* against the entire human race!”¹⁵³ Unfortunately for his client, his ‘brilliant’ effort (temporarily) failed: “You’re out of order, counselor! The bench will entertain no such motions until this trial has ended! The district attorney may begin his opening argument!”¹⁵⁴ The reader cannot wait to hear how that countersuit plays out...or not.

Fortunately, in its current manifestation, Nelson & Murdock tend to do better, perhaps because they actually went to law school (indeed, to Columbia, both graduating with honors).¹⁵⁵ Although they barge into a would-be client’s interrogation rather than having that suspect invoke her own *Miranda* rights,¹⁵⁶ they recognize a reasonable period in which someone can be jailed before charge and the *Brady* requirement that a prosecutor make timely disclosure of material exculpatory information.¹⁵⁷ They refuse to turn over client files, even for a deceased client, based upon attorney-client privilege and the rules of client confidentiality.¹⁵⁸ They demonstrate knowledge of the ethics rules forbidding attorney direct contact with a represented client, and those regarding conflicts of interest.¹⁵⁹ And sometimes the script writers take pains to get even the small details correct.

¹⁵⁰ See Oren Nimni, *TV’s Only Accurate Law Show*, CURRENT AFFAIRS (Dec. 15, 2015), <https://www.currentaffairs.org/2015/12/tvs-only-accurate-law-show> [<https://perma.cc/9QN8-YYDU>].

¹⁵¹ DAREDEVIL EPIC, *supra* note 11, at 17.

¹⁵² *Id.* at 56.

¹⁵³ *Id.* at 150.

¹⁵⁴ *Id.*

¹⁵⁵ *Daredevil: Rabbit in a Snow Storm*, *supra* note 136, at 7. More seriously, the series is in part more accurate because we tend to demand certain types of accuracy in today’s entertainment, but also because the internet tends to place accuracy at everyone’s fingertips. The internet is, after all, where modern superheroes get their gear. See *Daredevil: Nelson v. Murdock*, *supra* note 1, at 10 (disclosing the internet as the source of Murdock’s initial costume).

¹⁵⁶ *Daredevil: Into the Ring*, *supra* note 72, at 8. *Miranda* rights hardly require a citation, but even as I am writing about comics, this remains a law review. So, see *Miranda v. Arizona*, 384 U.S. 436 (1966).

¹⁵⁷ See *Daredevil: Into the Ring*, *supra* note 72, at 12–14; see also *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

¹⁵⁸ *Daredevil: Kinbaku*, *supra* note 105, at 11–12.

¹⁵⁹ *Daredevil: Regrets Only*, *supra* note 105, at 13–14.

One such instance occurs when Nelson & Murdock defend a Fisk crony who killed a man in a bowling alley and claims self-defense. In the initial client interview, Murdock suggests that they “waive criminal procedure law 180.80,”¹⁶⁰ referring to the New York statute that permits an incarcerated felony defendant to seek release if not promptly indicted or put to a preliminary hearing.¹⁶¹ Later, working in their office, Matt and Foggy “pull section 35.15 of the Penal”¹⁶²—at least once their chintzy internet cooperates—which would be N.Y. Penal Law § 35.15, New York’s self-defense provision. Their plan is to “take our facts and fit them to the CJI and the statute,”¹⁶³ the former of which refers to New York’s Criminal Jury Instructions.¹⁶⁴ So, not only do they hit the right books, but they demonstrate thoughtful criminal defense—not bad for television. When they defend the client before the jury, in both opening and closing they correctly stress the prosecution’s burden to prove beyond a reasonable doubt that their client was *not* acting in self-defense.¹⁶⁵ And when the jury deadlocks, the judge gives an *Allen* charge.¹⁶⁶

The lead-up to Punisher’s prosecution has some fine moments as well. Murdock, Nelson, and a public defender discuss the potential for extradition to Delaware because it has the death penalty, unlike New York.¹⁶⁷ (As it turns out, after the show’s release, Delaware’s capital sentencing scheme was ruled unconstitutional.¹⁶⁸ But at the time, the assertion was legally correct.) And the

¹⁶⁰ *Daredevil: Rabbit in a Snow Storm*, *supra* note 136, at 13.

¹⁶¹ N.Y. CRIM. PROC. LAW § 180.80 (2017).

¹⁶² *Daredevil: Rabbit in a Snow Storm*, *supra* note 136, at 17–18.

¹⁶³ *Id.* at 17.

¹⁶⁴ See *Criminal Jury Instructions & Model Colloquies*, N.Y. STATE UNIFIED COURT SYSTEM, <http://www.nycourts.gov/judges/cji/index.shtml> [<https://perma.cc/6UAW-7KBQ>] (last visited Apr. 12, 2017).

¹⁶⁵ See N.Y. PENAL LAW §§ 25.00(1), 35.00 (2017); *People v. McManus*, 496 N.E.2d 202, 204–05 (N.Y. 1986).

¹⁶⁶ See *Allen v. United States*, 164 U.S. 492 (1896). Both Nelson and Murdock make offhand legal and “cop speak” references, as when Murdock uses a great one-liner in a closing argument that makes use of Potter Stewart’s famous definition of hard-core pornography: “[R]ight and wrong. Good and evil. . . . [O]ften it’s like pornography—you just know when you see it.” *Daredevil: Rabbit in a Snow Storm*, *supra* note 136, at 20; see also *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Nelson correctly identifies that only a United States Attorney, and not the New York County District Attorney, can make a deal for “WITSEC,” putting a client into federal witness protection. *Daredevil: Dogs to a Gunfight*, *supra* note 100, at 6, 9–10; see *Witness Security Program*, U.S. MARSHALS SERV. (May 8, 2017), <https://www.usmarshals.gov/witsec/> [<https://perma.cc/U5WV-372G>]. More generally, in having the FBI and the U.S. Attorney’s Office bring down Fisk, the series highlights a critical distinction between federal and state law enforcement that is often not appreciated by the layperson. See *Daredevil: Daredevil*, *supra* note 84, at 20 (noting the FBI transport).

¹⁶⁷ *Daredevil: Regrets Only*, *supra* note 105, at 7.

¹⁶⁸ See *States With and Without the Death Penalty*, DEATH PENALTY INFO. CTR. (Nov. 9, 2016), <http://www.deathpenaltyinfo.org/states-and-without-death-penalty> [<https://perma.cc/3N7V-74PQ>]. “On August 2, 2016, the Delaware Supreme Court held that the state’s capital sentencing procedures

trial itself starts out well enough: first a jury is selected via voir dire (which given Punisher's crimes requires four hundred jurors to seat the twelve);¹⁶⁹ then opening statements are made, acknowledging that the defense could defer until after the prosecution's case in chief;¹⁷⁰ then the prosecution's first witness testifies;¹⁷¹ etc. Behind the scenes, Nelson and Murdock debate the plea of not guilty by reason of insanity and its "M'Naghten Rule,"¹⁷² but decide against it in part because it has only a "0.12% acquittal rate in New York,"¹⁷³ which number is taken from a 1995 study.¹⁷⁴ So, they instead try to make out a case of "extreme emotional disturbance for which there was a reasonable explanation or excuse," a mitigation under the Model Penal Code that has been adopted in New York.¹⁷⁵

Unfortunately, when defendant Frank Castle takes the stand, legal accuracy takes a gratuitous dive. Rather than questioning the witness, after finding him "hostile," Murdock proceeds to give the jury a rousing speech about Frank's vigilantism that leaves the courtroom audience cheering.¹⁷⁶ This absurdity is entirely unnecessary to the plot, because Castle has decided to throw the trial in order to take an under-the-table deal; thus, Castle could simply have given incriminating answers to Murdock's questions.¹⁷⁷ Instead, Castle follows Murdock's jury speech with one of his own.¹⁷⁸ Alas. Yet after this speechifying, Murdock does remember to say, "No further questions, Your Honor,"¹⁷⁹ making many a mock trial coach proud.

Legal accuracy in entertainment is serious business, for which *Daredevil* earns mostly good marks even as it makes some unforced errors.¹⁸⁰

were unconstitutional and struck down Delaware's death penalty statute. On August 15, the Delaware Attorney General's office announced that it will not appeal the Supreme Court's ruling." *Id.* See also *Rauf v. State*, 145 A.3d 430 (Del. 2016).

¹⁶⁹ *Daredevil: Semper Fidelis*, *supra* note 2, at 1.

¹⁷⁰ *Id.* at 17.

¹⁷¹ *Id.* at 18.

¹⁷² *Id.* at 2.

¹⁷³ *Id.*

¹⁷⁴ Carmen Cirincione et al., *Rates of Insanity Acquittals and the Factors Associated with Successful Insanity Pleas*, 23 BULL. AM. ACAD. PSYCHIATRY LAW 3, 401–02 (1995), <http://www.jaapl.org/content/23/3/399.full.pdf> [<https://perma.cc/R26D-ALRV>].

¹⁷⁵ *Daredevil: Guilty as Sin*, *supra* note 114, at 13–14. See N.Y. PENAL LAW §§ 125.20(2), 125.25(1)(a), 125.27(2)(a) (2017) (making a killing the crime of first-degree manslaughter).

¹⁷⁶ *Daredevil: Guilty as Sin*, *supra* note 114, at 22–23.

¹⁷⁷ See *id.* at 30 (meeting with Fisk in culmination of the deal).

¹⁷⁸ *Id.* at 23–25.

¹⁷⁹ *Id.* at 23.

¹⁸⁰ Another running flaw is to overplay the role of a district attorney in managing a police sting. See, e.g., *Daredevil: The Man in the Box*, *supra* note 107, at 10–11 (describing DA Reyes' role in what ultimately turned into the killing of Frank Castle's family); *Daredevil: Dogs to a Gunfight*, *supra* note 100, at 22–28 (showing DA Reyes' role in the sting designed to lure out Punisher).

C. Defense Attorney Role Model

Just as the public acquires a sense—accurate or not—of our criminal justice system from entertainment, so attorneys sometimes acquire a role model. Probably as many attorneys have been inspired to their calling by the fictional Atticus Finch,¹⁸¹ as by Clarence Darrow.¹⁸² And, as Jonathan Rapping has passionately argued, attorney role models are important.¹⁸³ So, what of the superhero attorney?

Matt Murdock is not the only one to fit that bill. Indeed, he is not even its longest running, which would be District Attorney Harvey Dent.¹⁸⁴ Then again, Dent no longer prosecutes criminals once he himself becomes one (Batman nemesis Two Face), whereas Murdock maintains a steady diet of legal practice by day and vigilante justice by night. This unique combination prompts nurse Claire Temple to ask the natural question, “The hell does that work?,” to which Murdock responds, “I’ll let you know when I figure it out.”¹⁸⁵ He is a work in progress.

Nor is Murdock the only defense attorney superhero. The first public defender superhero, Mark Shaw, was introduced in 1975.¹⁸⁶ But Shaw, like Two Face, turns from his day job, deciding to hunt down criminals himself as the Manhunter.¹⁸⁷ And there are others, like She-Hulk, largely for the defense,¹⁸⁸ and the straightforwardly-named Vigilante for the prosecution.¹⁸⁹

For the most part, the *Daredevil* television series presents a positive model for the criminal defense attorney. I have already commented upon its legal accuracy, and more importantly here, Nelson and Murdock are both ultimately in it for the right reason—justice. In the very first episode, we have a humorous but meaningful exchange in which the two play to a real estate agent trying to rent out what will become their office space:

Arguably, however, this does contribute to the storytelling as it permits the viewer to get to know the district attorney.

¹⁸¹ Atticus is, of course, a star in Harper Lee’s Pulitzer-prize winning *To Kill a Mockingbird*, first published in 1960. That star was somewhat tarnished by the unfortunate publication of the rambling *Go Set a Watchman* in 2015.

¹⁸² See *Clarence Darrow Is Dead in Chicago*, N.Y. TIMES (Mar. 14, 1938), <http://www.nytimes.com/learning/general/onthisday/bday/0418.html> [<https://perma.cc/6AWH-WDK9>].

¹⁸³ See generally Jonathan A. Rapping, *It’s a Sin to Kill a Mockingbird: The Need for Idealism in the Legal Profession*, 114 MICH. L. REV. 847 (2016). “The legal profession is in need of heroes—idealistic role models who will inspire today’s lawyers—both to eschew the values that drive the dominant legal profession, and to address the justice gap.” *Id.* at 848.

¹⁸⁴ Hilyerd, *supra* note 3, at 159.

¹⁸⁵ *Daredevil: World on Fire*, *supra* note 75, at 1.

¹⁸⁶ Hilyerd, *supra* note 3, at 178.

¹⁸⁷ *Id.*; *Mark Shaw (New Earth)*, DC DATABASE, [http://dc.wikia.com/wiki/Mark_Shaw_\(New_Earth\)](http://dc.wikia.com/wiki/Mark_Shaw_(New_Earth)) [<https://perma.cc/9H4G-J33P>] (last visited May 21, 2017).

¹⁸⁸ Hilyerd, *supra* note 3, at 181.

¹⁸⁹ *Id.* at 182.

- Agent: Hell's Kitchen's on the rebound, Mr. Nelson, and in 18 months, you won't be able to rent a broom closet at this price point.
- Murdock: We'll take it.
- Nelson: (Chuckling) We will talk about it. Because we're not sure we can afford even this palace, unless we make some changes to our current clientele policies.
- Murdock: My partner and I are having some disagreements over the direction of Nelson & Murdock. I believe we're here to defend the innocent.
- Nelson: And I believe the innocent includes everyone not yet convicted of a crime. You know, as the law states.
- Murdock: He tends to use fancy terminology.
- Nelson: And my partner fails to recognize that, as defense attorneys, we're never gonna be able to keep the lights on, waiting on a horde of innocent souls to stumble into our loving arms.
- Murdock: At this point, I'd settle for just one.¹⁹⁰

This is an issue pondered by many a student considering a career in criminal defense, and neither Nelson nor Murdock necessarily has the better argument. Of course, in some defense roles—such as public defender—one must be willing and ready to zealously defend *every* person charged with crime, and surely every defense attorney (and prosecutor!) should understand and believe this. But as a private defense attorney, one can choose clients. Yet, it would be the rare defense attorney indeed who would defend *solely* ‘fully innocent’ clients, meaning those who have not factually committed any of the acts in question. Instead, it seems most defense attorneys should incorporate a bit of Nelson *and* Murdock: an idealistic sense that she is the final bulwark against injustice—and surely conviction of the innocent is the greatest but far from only injustice—and also a realistic streak that ensures sufficient remuneration and other professional rewards that permit the necessities for a long and meaningful career. Hence, fittingly, it is Nelson *and* Murdock that finds success, beginning with their first client, the factually and legally innocent Karen Page.

Although there are later exchanges in which Nelson wonders whether they made the right decision turning down a very lucrative offer from a prestigious firm, he never requires much convincing from Murdock, who at such times tends to refer to his childhood hero, Thurgood Marshall.¹⁹¹ The most poignant such exchange

¹⁹⁰ *Daredevil: Into the Ring*, *supra* note 72, at 7.

¹⁹¹ *Daredevil: Nelson v. Murdock*, *supra* note 1, at 21–23. We learn that Matt became a Marshall fan at a young age in Season One, Episode 2, in which the young Murdock reads a portion of Justice Marshall's Liberty Medal acceptance speech to his father. *Daredevil: Cut Man*, *supra* note 71, at 21; see *Thurgood Marshall*, NAT'L CONST. CTR., <http://constitutioncenter.org/liberty-medal/recipients/thurgood-marshall> [<https://perma.cc/PR8F-KVPL>] (last visited May 21, 2017).

occurs when Nelson is tempted by a large retainer offered by, unbeknownst to them, Wilson Fisk's personal assistant.¹⁹² Murdock senses that something is wrong—there is no free lunch—and the writers poignantly play off his physical disability:

Nelson: What is your problem?

Murdock: He wouldn't even give us his name, Foggy.

Nelson: You wouldn't care if you could see the zeroes on this check.

Murdock: Yeah, maybe you would if you couldn't.¹⁹³

Money can certainly blind the conscience of the best of us.

In sum, setting aside his role as vigilante (much more on that below), Murdock tends to be a good role model for defense attorneys. He fights the good, hard fights, and he fights them for the right reasons, going just as far as his morality will permit—a line that for real-life defense attorneys is set by canons of legal ethics. In the classic words of defense counsel Henry Lord Brougham, a defense attorney “knows, in the discharge of that office, but one person in the world, that client and none other.”¹⁹⁴ Just as Brougham did not intend for the defense attorney to cross the ethical line,¹⁹⁵ Murdock will not cross his ethical lines, and neither should we.

There is one sense, however, in which the series does a disservice, and that is playing into the notion that public defenders are incompetent. Perhaps best framed by the clueless stutterer in *My Cousin Vinny*,¹⁹⁶ this is an unfortunate stereotype that Jonathan Rapping in particular is working to correct.¹⁹⁷ Yet in Season Two, Nelson and Murdock meet the public defender assigned to Frank Castle: it is only his second case, and he is not only eager to plead his client guilty, but he is equally eager to see him extradited to another state so that he can be executed.¹⁹⁸ Hardly a model of competent representation or of zealous advocacy.

¹⁹² *Daredevil: Rabbit in a Snow Storm*, *supra* note 136, at 9.

¹⁹³ *Id.*

¹⁹⁴ Monroe H. Freedman, *Henry Lord Brougham and Zeal*, 34 HOFSTRA L. REV. 1319, 1322 (2006) (capitalization removed).

¹⁹⁵ *See generally id.*

¹⁹⁶ *See “My Cousin Vinny” (1992)*, AMERICAN RHETORIC: MOVIE SPEECHES, <http://www.americanrhetoric.com/MovieSpeeches/moviespeechmycousinvinny1.html> [<https://perma.cc/VTW9-6VBB>] (last visited May 21, 2017).

¹⁹⁷ *See* Jonathan A. Rapping, *The Power to Transform Is Stronger than the Power to Punish: Public Defenders Are the Key to Equal Justice*, 6 L.A. PUB. INT. L.J. 72 (2016); *see also* GIDEON'S PROMISE, <http://www.gideonspromise.org/> [<https://perma.cc/KH96-GA3T>] (last visited May 21, 2017).

¹⁹⁸ *Daredevil: Regrets Only*, *supra* note 105, at 5–7.

D. Catholicism

Murdock's Catholicism is worth brief mention because it is central to his character (Frank Castle, the Punisher, was also Catholic).¹⁹⁹ As described above, author Frank Miller was responsible for highlighting Murdock's Catholicism, believing it a critical component of his character,²⁰⁰ and the television series opens with Murdock participating in the Sacrament of Penance (or Confession).²⁰¹ Murdock consistently turns to his faith as an external check on his vigilantism, whereas characters like Fisk have no check of any variety and therefore become totally lost to their ambitions.

Murdock's priest, Father Lantom, is a caricature, but his wise advice and paternal regard regularly counsel Murdock out of poor choices from which he might be unable to return. When Murdock considers whether he morally ought to kill Fisk, Lantom counsels that, "Few things are absolute, Matthew. Even Lucifer was once an angel. It's why judgment and vengeance are best left to God."²⁰² And, more particularly,

Another man's evil does not make you good. Men have used the atrocities of their enemies to justify their own throughout history. So the question you have to ask yourself is, are you struggling with the fact that you don't want to kill this man, but have to? Or that you don't have to kill him, but want to?²⁰³

For the comic devotees, it is worth noting that the counsel of Father Lantom is responsible for Murdock's ultimate armored suit, devil horns and all. When Murdock inquires why God would "put the devil in me," Lantom responds that perhaps God created the devil "to become a symbol to be feared, warning us all to tread the path of the righteous."²⁰⁴ Thus, when Matt shortly thereafter finds armorer Melvin Potter, he asks not for a *suit*, but for a *symbol*.²⁰⁵

Finally, religion makes for some good lines:

Claire Temple: Okay, I find a guy in a dumpster who turns out to be some kind of blind vigilante who can do all of this really weird shit like smell cologne through walls and sense whether someone's unconscious or faking it. Slap on top of that, he

¹⁹⁹ *Daredevil: New York's Finest*, *supra* note 103, at 8.

²⁰⁰ See *supra* Part II.B.

²⁰¹ See *supra* Part III.A; *Daredevil: Into the Ring*, *supra* note 72, at 2–3.

²⁰² *Daredevil: Speak of the Devil*, *supra* note 83, at 14.

²⁰³ *Id.* at 15.

²⁰⁴ *Daredevil: The Path of the Righteous*, *supra* note 89, at 16.

²⁰⁵ *Id.* at 21–22.

can take an unbelievable amount of punishment without one damn complaint.

Murdock: The last part's the Catholicism.²⁰⁶

IV. *DAREDEVIL* AND VIGILANTISM

As described above, Matt Murdock, Frank Castle, Wilson Fisk, and other characters in *Daredevil* might be described as vigilantes. But what *is* a vigilante?

A. *Defining a Vigilante*

The English word *vigilante* is an Anglicization of the Spanish word *vigilante*, meaning vigilant.²⁰⁷ According to Merriam-Webster, a vigilante is “a member of a volunteer committee organized to suppress and punish crime summarily (as when the processes of law are viewed as inadequate),”²⁰⁸ or, more broadly, “a self-appointed doer of justice.”²⁰⁹

Neither Murdock nor Fisk are primarily interested in *punishing* crime. While Murdock is convinced that everyone he hurts deserves that pain,²¹⁰ he seems to leave punishment to his day job (attorney) and to his faith (Catholicism). His nighttime excursions are intended to stop those who are about to harm others *more* than they have already done.²¹¹ But as the Merriam-Webster definition implies, with deterrence and incapacitation being core justifications for state punishment—*suppressing* crime—and with American police having monopolized the role of

²⁰⁶ *Daredevil: Cut Man*, *supra* note 71, at 20.

²⁰⁷ See *Vigilante*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/vigilante> [https://perma.cc/UN3T-F43B] (last visited May 21, 2017).

²⁰⁸ *Id.* Examples would be the San Francisco Committee of Vigilance of the 1850s and—perhaps—the Sons of Liberty and their Tea Party of the 1770s, though for the latter it is much harder to argue they were suppressing or punishing *crime*. For a description of the San Francisco Committee of Vigilance, see ROBINSON & ROBINSON, *infra* note 220, at Ch. 1 at 4–6.

²⁰⁹ MERRIAM-WEBSTER DICTIONARY, *supra*, note 207. According to Black’s Law Dictionary, a vigilante is a person “who seeks to avenge a crime by taking the law into his or her own hands.” *Vigilante*, BLACK’S LAW DICTIONARY (10th ed. 2014).

²¹⁰ For example, at one point Murdock assures Karen Page that “everyone that’s taken money from [Fisk], everyone that’s helped him tear this city apart—they’re all gonna get what’s coming to them, along with Wilson Fisk.” *Daredevil: Daredevil*, *supra* note 84, at 3. His words seem to connote an ethical desert.

²¹¹ Emblematic is Murdock’s first action that could be attributed to his alter-ego Daredevil, which was to stop a man from sexually abusing his daughter when the system failed to do the same. See *Daredevil: Nelson v. Murdock*, *supra* note 1, at 24–25. Season Two begins with Matt saving a policeman and hostage from murderous robbers, *Daredevil: Bang*, *supra* note 98, at 1–4; and Matt tells Foggy of another battered woman he recently saved, *Daredevil: Bang*, *supra* note 98, at 6 (“If I take a night off, people get hurt.”).

policing just as prosecutors have for prosecuting,²¹² it seems appropriate to consider his actions as vigilantism. Murdock does not merely respond to unlawful force when he happens across it; he very actively seeks it out.

Fisk too is not interested in punishing crime. But while his sense of justice is twisted and perverse, until the conclusion of Season One—when he finally realizes he is not the Good Samaritan but rather the ill intent that sets such needs in motion—his goal is to make his city, Hell’s Kitchen, a better place, a city reborn.²¹³ So, perhaps the Season One Fisk also has a claim to vigilantism.

Frank Castle seems the most interested of the three in doling out punishment, which is only appropriate seeing as the police dubbed him *the Punisher*.²¹⁴ While, like Murdock, his targets are very carefully selected,²¹⁵ and, like Murdock, he sees himself as doing “what’s required”²¹⁶ to keep people “from hurting anybody else,”²¹⁷ he also tends to kill in especially painful ways he thinks the victims deserve, such as hoisting them onto meat hooks.²¹⁸ “I think there’s no good in the filth that I put down,” explains Castle, “that’s what I think.”²¹⁹

But if all three have some claim to vigilantism, are the vigilante actions of Murdock, Fisk, and Castle relevantly the same? In order to consider—and possibly differentiate—the ethics of their actions, we clearly need a more rich and

²¹² America has a *history* of private action in both policing and prosecution. For example, because there were virtually no police at the founding—and certainly nothing like the paramilitary police of today—the justification of law enforcement was fully available to all private persons, allowing deadly force necessary to arrest or prevent any felony.

²¹³ While being transported by the FBI following an arrest from which he knows he will escape, Fisk reflects as follows:

I was thinking about a story from the Bible. . . . I’m not a religious man, but I’ve read bits and pieces over the years—curiosity more than faith. [Fisk describes the parable of the Good Samaritan from Luke 10, including that a man “was traveling from Jerusalem to Jericho, when he was set upon by men of ill intent” who “beat him” and “left him bleeding in the dirt.”] [The Samaritan] did this simply because the traveler was his neighbor. He loved his city and all the people in it. I always thought that I was the Samaritan in that story. It’s funny, isn’t it? How even the best of men can be deceived by their true nature. . . . I’m not the Samaritan. . . . I’m not the priest, or the Levite. . . . I am the ill intent, who set upon the traveler on a road that he should not have been on.

Daredevil: Daredevil, *supra* note 84, at 18–19.

²¹⁴ See *Daredevil: Dogs to a Gunfight*, *supra* note 100, at 12.

²¹⁵ See, e.g., *id.* at 11 (“He’s tracking gangs to their home turf and taking them out with military precision. But it doesn’t stop there. His targets aren’t random He knows exactly who he wants to hit. And if any of his intended marks are lucky enough to escape...say they’re off buying a sandwich, or in bed with the flu...recuperating under an assumed name at Metro-General...sooner or later, he gets to them, too.”) (combining the words of ADA Tower and DA Reyes).

²¹⁶ *Daredevil: New York’s Finest*, *supra* note 103, at 4.

²¹⁷ *Id.* at 27.

²¹⁸ See *id.* at 17.

²¹⁹ *Id.* at 18. The entire conversation between Murdock and Castle is illuminating. See *id.* at 16–19.

nuanced definition of vigilantism than those supplied by Merriam-Webster. And to articulate such a philosophy of when it might be acceptable to act outside of the constraints of societal criminal law, it would seem necessary to have an initial philosophy of what justifies that very societal law. Fortuitously, Paul and Sarah Robinson extensively review vigilantism in their book, *Shadow Vigilantes: How Distrust in the Justice System Breeds a New Kind of Lawlessness*.²²⁰ On account of some publishing delays, their book is not yet in print as of this writing. But the authors graciously provided a prepublication manuscript from which we can learn.²²¹

1. Paul and Sarah Robinson

Paul and Sarah Robinson articulate a social contract view, namely that “[i]n modern societies, citizens give up most of their natural right to defend themselves or to respond to wrongdoing, in return for a promise of protection and justice from the government.”²²² This assumes that individuals in the state of nature had a right to respond to wrongdoing, even when not personally a victim thereof.²²³ At least the latter component might not be self-evident,²²⁴ but we can assume it for our purposes here.

The Robinsons do not explicitly state whether, in their view, the individual irrevocably *transfers* this natural right upon state formation, or whether it is merely a conditionally binding contract.²²⁵ But they clearly believe it to be the latter, not only empathizing with those who act outside of the law when the government persistently breaches its obligation (classic, “moral” vigilantes),²²⁶ but declaring that we ought not ask such moral vigilantes to refrain from so acting.²²⁷

²²⁰ PAUL H. ROBINSON & SARAH M. ROBINSON, *SHADOW VIGILANTES: HOW DISTRUST IN THE JUSTICE SYSTEM BREEDS A NEW KIND OF LAWLESSNESS* (forthcoming 2018).

²²¹ On file with author. Given the unexpected timing, there may, of course, be differences in their final text.

²²² ROBINSON & ROBINSON, *supra* note 220, Preface at 9, Ch. 2 at 2.

²²³ Thus, in Chapter 2, they similarly claim that “[p]eople are born with certain inalienable rights, including the right to use force to protect themselves *and to do justice*.” *Id.* at Ch. 2 at 2 (emphasis added). They point to the American Declaration of Independence as a relevant articulation of the social contract. *Id.* One interesting question, it seems, is the extent to which the moral right to revolution has conditions identical or similar to the moral right to vigilantism.

²²⁴ See, e.g., Alec Walen, *Retributive Justice*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY § 4.2 (last modified Sept. 23, 2017), <https://plato.stanford.edu/entries/justice-retributive/> [<https://perma.cc/4BPK-R47L>]. (“One might start, as social contract writers like Hobbes and Locke do, with the view that in the state of nature, the *victim* has the right to punish.”) (citations omitted) (emphasis added).

²²⁵ See ROBINSON & ROBINSON, *supra* note 220, Preface at 9, Ch. 2 at 2.

²²⁶ *Id.* at Preface at 9.

²²⁷ *Id.* at Preface at 10, Ch. 5 at 1.

“Vigilantism is like war,” they conclude; “while it is never desirable, it is sometimes just.”²²⁸

So, for Paul and Sarah Robinson, when the government persistently fails to deliver in its criminal justice commitment, one can be morally justified in personally responding to criminal wrongdoing by acting outside of the societal law. And, very relevant to the context of Marvel’s Hell’s Kitchen, “[t]he government’s breach of the social contract can affect not just an individual but an entire neighborhood.”²²⁹ But obviously not every such responsive action could be morally correct, whether by an individual, by a neighborhood group, or by an individual on behalf of a neighborhood. This very question is of course one of the main sources of tension in *Daredevil*’s second season—is Punisher morally equivalent to Daredevil, or are they quite different? So, how can one decide between the two? What is the dividing line—or, more likely, what are the dividing lines?

Here Paul and Sarah Robinson offer “ten rules one could suggest to help [vigilantes] stay closer to what is morally defensible,”²³⁰ but they acknowledge that their rules leave “many fuzzy lines.”²³¹

i. Ten Rules (Whittled to Around Five)

*Rule 1: Don’t act unless there is a serious failure of justice.*²³²

This seems a potentially fair criterion: because vigilantism is by definition acting outside of the law, it has costs that are never worthwhile for only very minor failures of justice. If nothing else, vigilantism blurs the lines of our social obligation to obey the state’s law. Hence, we will require the state to commit a “serious” breach of its criminal justice social contract before any vigilante response will be considered moral. However, Paul and Sarah Robinson offer no rule nor even sense of what is and is not a *serious* failure.²³³ Moreover, a relatively

²²⁸ *Id.* at Ch. 1 at 8.

²²⁹ *Id.* at Ch. 2 at 3.

²³⁰ *Id.* at Ch. 5 at 2.

²³¹ *Id.* at Ch. 5 at 1.

²³² *Id.* at Ch. 5 at 2.

²³³ Their only proffer is that “a pattern of petty thefts by youngsters in a marketplace is not *likely* to justify . . . vigilante action.” *Id.* at Ch. 5 at 2 (emphasis added). Thus, they are unwilling to take a position on even such a minor case. More generally, while the Robinsons do a herculean job of gathering diverse and important historic and contemporary examples of actions that might be vigilantism, they supply essentially no application of their proffered rules of moral vigilantism. Indeed, there might be only one explicit application of any rule in the entire text. See *id.* at Ch. 7 at 7 (invoking their Rule 9). There are also vague references in Chapter 6 at page 8 (“[t]he practice would seem to violate many if not most of the rules”) and Chapter 10 at page 12 (“[e]ven if . . . actions are not morally justified [] under [the] rules [] . . .”).

minor failure directed entirely at one victim might have serious ramifications for that single victim.²³⁴

But in the case of Marvel's Hell's Kitchen, we get an easy case: the neighborhood turns into a veritable war zone during Season One, with much of the police force, media, and even judiciary on the payroll of a ruthless man who kills scores of people in a series of simultaneous bombings.²³⁵ Police officers execute those who might 'out' this man.²³⁶ And things don't look up in Season Two, when criminal gangs seek to fill the vacuum his arrest leaves behind. Between that chaos and the more personalized injustices Matt Murdock sometimes explains, Paul and Sarah Robinson's first rule of moral vigilantism seems satisfied in spades.

It is worth noting that in explicating this first rule, the Robinsons offer what could be an alternative criterion: vigilantism "cannot justify itself unless it produces more benefit than the disruption costs."²³⁷ If correct, we might no longer have a *serious* threshold but rather only a relative measure, at least absent a more developed claim as to the cost of any vigilante action. This makes vigilantism seem like a form of the longstanding justification of choice of evils (necessity), merely without any of its specific limitations.²³⁸ It is, in a sense, the *ultimate* choice of evils: if you do more good than harm, you are in the clear.

Perhaps this would be a wise rule for moral vigilantism and perhaps it would not. Is it fair to require that a would-be vigilante properly and accurately assess the full societal consequences—direct and indirect—of her actions, when that calculus might be difficult to impossible precisely because of the state's failures? It is hard enough to predict consequences in a largely law-abiding society; it seems much more difficult on the battlefield.

These are not easy questions, but as articulated, Paul and Sarah Robinson's Rule 1 seems satisfied in Marvel's Hell's Kitchen, at least for everyone other than Wilson Fisk. Fisk is a more difficult case because he is the *cause* of much of the lawlessness—the cause of the serious failures of justice—and quite obviously it

²³⁴ See Travis Dumsday, *On Cheering Charles Bronson: The Ethics of Vigilantism*, 47 S. J. PHIL. 49, 64–65 (2009) (describing possibly moral vigilantism in a state that has enacted good laws and is enforcing them).

²³⁵ See *Daredevil: Condemned*, *supra* note 84, at 25; *Daredevil: Daredevil*, *supra* note 84, at 16.

²³⁶ *Daredevil: World on Fire*, *supra* note 75, at 11–13.

²³⁷ ROBINSON & ROBINSON, *supra* note 220, at Ch. 5 at 2.

²³⁸ For example, MODEL PENAL CODE § 3.02(1) provides:

Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

- (a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and
- (b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- (c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

could not be moral vigilantism to be the very cause to which one is allegedly now responding. The television series insinuates, however, that there is very ample unresolved criminality before Fisk's actions; indeed, it is that rampant criminality that spurs Fisk to desire a better Hell's Kitchen.

*Rule 2: Don't cause more harm than is necessary and just, and avoid injury to innocent bystanders.*²³⁹

The first clause of Rule 2 requires a vigilante not cause more harm than is *just*. In any hard case, it will be of little help to define a *moral* vigilante—which is presumably a *just* vigilante—as one who does only “what is just” (or “what is moral”). It is a tautology, and the entire difficulty will be determining what *is* just/moral. Of course, not all cases are hard cases, but it seems little work will be done by the *just* component of the initial portion of Paul and Sarah Robinson's second rule.

The clause also requires a vigilante not cause more harm than is *necessary*. Here, we require more explanation. Relatively few things are necessary in the sense of one not being able to continue breathing without doing them—Murdock's vigilantism certainly is not—but many, many things are necessary in the sense of the Constitution's Necessary and Proper Clause, where the word means something more like “conducive to.”²⁴⁰ Surely, the Robinsons intend something between these poles, but the devil—as they say—is in the details. Think of the traditional law of self-defense, where we carve only the starkest of distinctions between ‘deadly’ and ‘non-deadly’ force. Surely there is much in between, but it just seems either too hard to define, too much to ask of one placed in that situation to differentiate, or too unclear to permit a jury to decide *ex post*. So, how are we to determine which vigilante actions were *necessary*? Is it a purely objective test, or do reasonable subjective views—or even non-reasonable subjective views—play a role? Thus, conceptual framing remains. If Daredevil must hit to discourage crime, how hard and often is it *necessary* that he hit, and who decides? Despite this uncertainty, some conception of proportionality between criminal-justice failure and vigilante response would be expected in any definition of moral vigilantism.

Rule 2's second clause, requiring a vigilante to avoid injury to innocent bystanders, could do significant work in differentiating the vigilantes of Marvel's Hell's Kitchen (e.g., Murdock adheres to it, Fisk does not). But a full exposition of the criterion would seem to require something the Robinsons do not provide: an

²³⁹ ROBINSON & ROBINSON, *supra* note 220, at Ch. 5 at 2.

²⁴⁰ At least according to the United States Supreme Court. See *McCulloch v. Maryland*, 17 U.S. 316 (1819) (loosely interpreting *necessary* to permit a national bank as conducive to the express authority to tax and spend); see also *United States v. Comstock*, 560 U.S. 126, 133–34 (2010) (“[T]he Necessary and Proper Clause makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are ‘convenient, or useful’ or ‘conducive’ to the authority's beneficial exercise.”) (some internal quotation marks omitted).

explanation as to *why* it is necessary to avoid injury to innocent bystanders. Such an explanation might help determine whether this is an absolute criterion or some sliding scale to be determined by the net social costs of alternatives. For example, in criminal law courses, many students feel it should be justified—or at least excused—to kill one anonymous person in order to save a close family member, and we of course have the Trolley Car problem in its many incarnations.²⁴¹ But again, even without nuance, this portion of the rule can do some work, as will be demonstrated below.

*Rule 3: Don't act unless there is no lawful way to solve the problem.*²⁴²

Rule 3 returns us to the concept of necessity, and perhaps a strict conception thereof: if there is a legal solution to the problem, it should always be favored to an illegal one. This seems plausible, because if there is a legal solution, then whatever the state's general failure in fulfilling its portion of the social criminal-justice contract, that failure is not affecting this instance, at least not critically so. Sure, the legal solution might not be as convenient or as easy as would be ideal, but it seems plausible that those types of concerns cannot remove one from her general obligation under the social contract to rely upon the legal recourse. This Rule, along with the others, will be applied below to the characters in Marvel's Hell's Kitchen.

*Rule 4: Don't act alone.*²⁴³

*Rule 7: Give the government warning beforehand that it is in breach of its social contract, and give it an opportunity to fix the problem, unless it is clear that such a warning would be useless.*²⁴⁴

*Rule 8: Publicly report afterwards what you have done and why.*²⁴⁵

Rule 4 is an interesting criterion, including because it means there would be no moral vigilantes in Marvel's Hell's Kitchen. It does not merely require a 'buddy system'; instead, "[t]he larger and more broadly-based the group, the better," with "[o]pen membership" being "ideal."²⁴⁶ None of the potential vigilantes in Hell's Kitchen establish anything like an open membership group in

²⁴¹ See Philippa Foot, *The Problem of Abortion and the Doctrine of the Double Effect*, 5 OXFORD REV. 5 (1967), available (with slight alterations) at <https://philpapers.org/archive/FOOTPO-2.pdf> [<https://perma.cc/Y8WG-3GNP>]; see also Judith Jarvis Thomson, *Turning the Trolley*, 36 PHIL. & PUB. AFF. 359 (2008).

²⁴² ROBINSON & ROBINSON, *supra* note 220, at Ch. 5 at 3.

²⁴³ *Id.* at Ch. 5 at 5.

²⁴⁴ *Id.* at Ch. 5 at 7.

²⁴⁵ *Id.*

²⁴⁶ *Id.* at Ch. 5 at 5.

order to further their aims. They tend to act alone or at least, in Fisk's case, to act unilaterally.

However, notwithstanding historic vigilantism and the significant benefits of group deliberation and inclusion, I'm not convinced that Rule 4 is a criterion of moral vigilantism.²⁴⁷ Instead—and I can fully understand this given Paul and Sarah Robinson framing their rules as a guide for would-be vigilantes as opposed to a philosophical construct²⁴⁸—this Rule, and some that follow, seem better placed in an understandably cautious C.Y.A. clause than in an expression of ethical requirements.²⁴⁹ I assert this for at least three reasons.

First, think back to the Robinsons' framing, which is that of a social contract that takes us out of the state of nature, and via which we cede our natural, inherent rights to see justice done. Because it is, in their view, a serious government breach of this contract that returns at least some moral right to see justice done, why must that justice now be collective? There is no such requirement in the natural law to which we are returning (I presume), so I would need more to understand their claim.

Second, the Rule seems counter to the Robinsons' own sympathies. Consider Chapter 2 of their text, which they open with this question: "Is moral vigilantism alive in America today?"²⁵⁰ As they do throughout the book, they use two rich examples to, presumably, assist in answering that question (because this is essentially the entire content of the chapter). In the first example, in which no vigilante was forthcoming and therefore an innocent woman is killed, there is no notion community action would have been necessary—the entire thrust is that we would all have been better off if Deanna Cook had killed her abusive husband before he killed her, even if that killing would not legally be self-defense.²⁵¹ In the second example, there is ineffective neighborhood action, but ultimately a lone vigilante who finally solves the problem Frank Castle-style.²⁵² Perhaps Paul and Sarah Robinson would counter that they did not explicitly proclaim either instance

²⁴⁷ Nor are other theorists. See, e.g., Dumsday, *supra* note 234, at 51 (allowing for lone vigilantes). Dumsday's work is considered *infra* at Part IV.E.

²⁴⁸ See ROBINSON & ROBINSON, *supra* note 220, at Ch. 5 at 2, where they introduce the rules, and *id.* at Ch. 5 at 8, where they provide a "final note" to "the prospective vigilance committee."

²⁴⁹ For one explanation of C.Y.A., see William Safire, *On Language; Glossary of a Scandal*, N.Y. TIMES (Aug. 16, 1987), <http://www.nytimes.com/1987/08/16/magazine/on-language-glossary-of-a-scandal.html> [<https://perma.cc/92LA-2QQ7>].

²⁵⁰ ROBINSON & ROBINSON, *supra* note 220, at Ch. 2 at 1.

²⁵¹ Cook's husband was ultimately convicted and sentenced to 85 years' imprisonment. See Sarah Mervosh, *Dallas Slaying Victim Deanna Cook's Family Celebrates Justice*, DALL. MORNING NEWS (May 2015), <https://www.dallasnews.com/news/crime/2015/05/26/dallas-slaying-victim-deanna-cooks-family-celebrates-justice> [<https://perma.cc/3XCN-ZNFN>].

²⁵² See Carey Goldberg, *Support Builds for Killer Who Broke Cycle of Fear*, N.Y. TIMES (June 18, 1996), <http://www.nytimes.com/1996/06/18/us/support-builds-for-killer-who-broke-cycle-of-fear.html> [<https://perma.cc/VHV7-DS4P>] (describing the killing of a bully who terrorized a neighborhood).

would constitute moral vigilantism—which is true—and that they were solely demonstrating some contemporary failings of our criminal justice system. But again, as a reader, I heard a different ethos, and thus I would at least want to better understand the reasoning behind this rule.

Third, think of what the Rule would require in the circumstance of serious government breach akin to that of Marvel's Hell's Kitchen. The police are largely owned by crime lord Wilson Fisk. And this is not a passing loyalty—officers not only murder those citizens who might expose him, but go so far as murdering their own partners when a partner *might* potentially turn on Fisk.²⁵³ And Fisk has plants in the media and judiciary as well.²⁵⁴ It is very difficult for me to understand why, in order to be a moral vigilante in these circumstances, a person would have to effectively commit suicide by publicizing her actions. At the very least, bringing in others would jeopardize those lives, something that often, to my mind, commendably concerns Matt Murdock.²⁵⁵

Therefore, I will not apply Paul and Sarah Robinson's Rule 4 in my analysis. Similarly, Rule 7 is a nullity on the facts, as they anticipate: "[I]n some instances, the failures of justice may be overwhelmingly obvious to all and a special notification to the government would be senseless."²⁵⁶ Such is the case in Marvel's Hell's Kitchen. For the same reasons, I cannot think Rule 8 a necessary component of moral vigilantism under the circumstances: "Such public reports may not always be feasible [or smart, I would add], but they ought to be done whenever possible."²⁵⁷

*Rule 5: Before acting, be sure of the facts and take full account of all relevant mitigations and excuses.*²⁵⁸

This Rule seems an excellent ideal, but probably too much to ask as a criterion of moral vigilantism. Paul and Sarah Robinson might concede as much, framing this Rule as necessary for the vigilante to 'win the battle for hearts and minds': "Understand that [the vigilante is] in a credibility contest with the official criminal justice system."²⁵⁹ Although not itself framed as one of their ten rules, this might itself be a relevant concept: to what extent, if any, is moral vigilantism

²⁵³ See *Daredevil: Shadows in the Glass*, *supra* note 83, at 11–13. "See," protests Officer Hoffman when asked to kill his comatose partner, "he's more than my partner, right? He's my friend. I've known him since I was a kid. That's 30, 35 years." *Id.* at 11–12. To which Fisk responds, "How much are each of those years worth to you? Hmm? In round figures?" *Id.* at 12. Whatever the precise cost, Fisk paid it and Hoffman kills his partner. *Id.* at 12–13.

²⁵⁴ *Daredevil: Condemned*, *supra* note 84, at 25; *Daredevil: Daredevil*, *supra* note 84, at 3, 16.

²⁵⁵ See, e.g., *Daredevil: Daredevil*, *supra* note 84, at 3–4.

²⁵⁶ ROBINSON & ROBINSON, *supra* note 220, at Ch. 5 at 7.

²⁵⁷ *Id.*

²⁵⁸ *Id.* at Ch. 5 at 5.

²⁵⁹ *Id.*

contingent upon some measure of societal acceptance? By which I mean not merely societal acceptance of the underlying moral principles motivating the vigilante acts (see Robinson Rule 9, below), but rather societal acceptance of the very vigilante acts. If, say, most of society considering the precise circumstances would not deem the actions morally justified, does that render them so? I am not sure, but it is sufficiently interesting to consider how *Daredevil*'s characters would fare under such a criterion below.

As for the Rule itself, my initial tendency is toward more moderate forms. Perhaps a moral vigilante must take into account all 'relevant mitigations and excuses' that are *known* or *reasonably knowable under the circumstances*. In other words, perhaps she must obtain as much factual information as reasonably possible, rather than having to 'be sure of the facts.' I would expect there might be a correlation between how serious is the government breach of its criminal justice social contract and how difficult it will be to ascertain those facts.

*Rule 6: Show restraint and temperance, not arrogance or vindictiveness.*²⁶⁰

*Rule 10: If it becomes clear that the problem cannot be fixed through vigilante action, then withdraw from further action.*²⁶¹

Like Rule 5, Paul and Sarah Robinson's Rules 6 and 10 seem motivated by a particular goal of vigilantism. In their explanation of Rule 6, they assert that a moral vigilante is "just a means of shaming the government into doing what it ought to do."²⁶² And in their explanation of Rule 10, they claim that "[v]igilante action must be a temporary and transitional state that moves the system to fix itself, not a permanent substitute for official conduct."²⁶³ So, for Paul and Sarah Robinson, the goal of moral vigilantism is to get the criminal justice system back on track.

Such a goal is obviously a very worthy one, but it is not self-evident that it is a necessary purpose of moral vigilantism. I would think it at least equally plausible that a proper goal would be to do the very justice the system is failing to provide in an individual case, or in a subset of individual cases, regardless of any greater societal consequences. Indeed, it might be instances in which the government may never regain the ability or motivation to once again fulfill its commitments in which vigilantism would most likely be moral. After all, in other instances, the government will be able to retroactively attempt at least some missed justice, making up for lost time (even if, as the saying goes, justice delayed is justice denied). In the humorous words of Travis Dumsday, "Batman might have

²⁶⁰ *Id.* at Ch. 5 at 6.

²⁶¹ *Id.* at Ch. 5 at 8.

²⁶² *Id.* at Ch. 5 at 6.

²⁶³ *Id.* at Ch. 5 at 8.

done well to leave Gotham City after a few years and set up shop in North Korea,” the latter having a more permanent vigilante need.²⁶⁴

Therefore, I am not convinced Rules 6 and 10, as expressed, are criteria of moral vigilantism. Nonetheless, there is certainly something intuitively appealing in the notions of *restraint* and *temperance*. As the Robinsons articulate elsewhere, “it is an inevitable weakness of vigilante action that, once the red line of criminal prohibition has been crossed, it is easy—too easy—for even the well-meaning vigilante to lose track of where the boundaries of moral justification lie.”²⁶⁵ “[O]nce that line is crossed, there are few obvious sign-posts telling the vigilante not to go a little further. It is in the nature of vigilantism unfortunately that, having left behind the sign-posts of legality, there inevitably arises the danger of the slippery slope.”²⁶⁶ As will be described below, Matt Murdock is tortured by just this concern.

*Rule 9: Respect the full society’s norms of what is condemnable conduct.*²⁶⁷

This seems a good criterion for moral vigilantism. If we continue operating under Paul and Sarah Robinson’s social contract model, then the trigger for moral vigilantism is the state’s failure to do justice—and a serious breach thereof—returning to the people some of their natural law right to do that same justice. But presumably there is not a natural law, state-of-nature right to do idiosyncratic justice, whatever one personally deems just. Thus, conclude the Robinsons, “[d]o not act in pursuit of justice for an offense unless it is clear that the larger society sees the offender’s conduct as truly condemnable.”²⁶⁸ The vigilante target should be something the state is *supposed* to be preventing, punishing, and thereby deterring.

ii. Shadow Vigilantes and the Vigilante Echo

Whether moral, immoral, or some combination thereof, Paul and Sarah Robinson see vigilantism as inevitable under sufficiently trying conditions, and therefore see a consequentialist lesson for the state: if a government does not adhere to its commitments, regardless of whether a vigilante response is morally justified, that response should be expected. Thus, they warn against criminal justice failures that will disillusion the populace.²⁶⁹ And, ultimately, because the Robinsons are most interested in the relatively minor failures of modern American criminal justice—minor when compared to, say, those of war torn countries or

²⁶⁴ Dumsday, *supra* note 234, at 66 n.8.

²⁶⁵ ROBINSON & ROBINSON, *supra* note 220, Ch. 5 at 1.

²⁶⁶ *Id.* at Ch. 6 at 9.

²⁶⁷ *Id.* at Ch. 5 at 7.

²⁶⁸ *Id.*

²⁶⁹ *Id.* at Preface at 9.

dystopian fiction—they are most concerned with what they term *shadow vigilantes* and the *vigilante echo*.²⁷⁰

Shadow vigilantes are persons sufficiently disillusioned to covertly subvert the system though they would not openly flout it.²⁷¹ These include persons who might condone classic vigilantism by refusing to report or assist in the investigation of that crime, or by refusing to indict or convict in a trial of that crime.²⁷² For those who know *Death Wish*, this would include the police inspector who tells Charles Bronson's character to "get out of New York...Permanently," and the witness to three of Charles Bronson's killings who falsely claims not to have seen the killer's face.²⁷³ One might also imagine persons who assist classic vigilantes 'behind the scenes,' perhaps suturing their wounds like *Daredevil* nurse Claire Temple. Or persons who become vocal and socially persuasive advocates for those classic vigilantes, like *Daredevil* journalist Karen Page. Shadow vigilantes might also be disillusioned state actors who decline to arrest or prosecute acts of vigilantism, who use excessive force or overcharging against ordinary criminals in a misguided attempt to "right" the system, who give false testimony to cover illegal investigation, or otherwise corrupt a system in an effort to eradicate systemic failures.²⁷⁴

The *vigilante echo* is the downward spiral in community confidence in the criminal justice system:

²⁷⁰ See *id.* at Preface at 10, Ch. 2 at 7. I should emphasize my point is solely the *relative* seriousness of criminal justice failures between a world like that of Marvel's Hell's Kitchen and our own, and so it is an easy claim. In Chapter 3 of their book, Paul and Sarah Robinson try to make the anecdotal case that our system has ample failures of its own, and it is a very interesting case because it is a counter-narrative to the more common accusations of over-criminalization. The two claims are not necessarily inconsistent, however, as the system might both fail to adequately punish too many serious crimes and over-punish too many minor crimes. But there is certainly nonetheless a tension between the Robinsons' narrative and the more common current refrain. See, e.g., *Overcriminalization*, THE HERITAGE FOUND., <http://solutions.heritage.org/constitutionalism/overcriminalization/> [<https://perma.cc/Q6KU-T9WZ>] (last visited Sept. 4, 2017); see also *Overcriminalization*, NAT'L ASS'N OF CRIMINAL DEF. LAWYERS, <https://www.nacdl.org/overcrim/> [<https://perma.cc/G8FR-UH4Z>] (last visited Sept. 4, 2017). This tension naturally extends to sub-issues. For example, Paul and Sarah Robinson bemoan use of the exclusionary rule to suppress relevant evidence (see ROBINSON & ROBINSON, *supra* note 220, at Ch. 3 at 1, 10–21), while others bemoan the Supreme Court's chipping away at longstanding principles of exclusion (see, e.g., Stephen Saltzburg, Response, Utah v. Strieff: *Chipping Away at the Exclusionary Rule*, GEO. WASH. L. REV. ON THE DOCKET (June 22, 2016), <http://www.gwlr.org/utah-v-strieff-chipping-away-at-the-exclusionary-rule/> [<https://perma.cc/96DJ-X7H6>]). More generally, the Robinsons criticize as technicalities what many others would surely defend as the rule of law. Either way, their collection of actual accounts makes for a fascinating read.

²⁷¹ See ROBINSON & ROBINSON, *supra* note 220, at Preface at 10.

²⁷² See *id.* at Preface at 10, Ch. 4 at 1; see generally *id.* at Chs. 8 and 9.

²⁷³ *DEATH WISH* (Paramount Pictures July 24, 1974).

²⁷⁴ See ROBINSON & ROBINSON, *supra* note 220, at Preface at 10; see generally *id.* at Ch. 10.

Once the government's failures of justice are serious enough or regular enough to undermine the criminal justice system's credibility with the community it governs, the angry and cynical reactions of citizens will prompt more problems and more opportunities to fail, which will further aggravate the system's credibility problem, in an endless downward spiral.²⁷⁵

Even a marginal decrease in a criminal justice system's perceived credibility reduces people's "willingness to defer to it and comply with it."²⁷⁶

* * *

In the exaggerated comic world of Marvel's Hell's Kitchen, there is both classic and shadow vigilantism. It is of course fiction, an extreme. But as with any good fiction, there might be things we can learn from those exaggerations. And besides, the world wants to know—is Matt Murdock a good guy or a bad guy?

B. *Matt Murdock/Daredevil*

Matt Murdock does not hide from himself that his actions are in violation of societal law. For example, when Claire Temple inquires why he does not simply take his evidence to the police, Murdock responds, "I wear a mask and beat on people. Doesn't exactly mesh with police policy."²⁷⁷ So, he is self-avowedly a classic vigilante in the sense of operating outside the constraints of societal criminal law. Is he a moral vigilante?

As explained above, there is a serious failure of justice in Marvel's Hell's Kitchen, satisfying Paul and Sarah Robinson's explicit Rule 1.²⁷⁸ Whether Murdock satisfies the different criterion they express in explicating that rule—producing more benefit than disruption—is difficult to know. One of the downsides of vigilantism is that it can create undesirable copycats, which Officer Brett Mahoney laments in the case of Daredevil: "No, it's not the first, just the latest. Yeah, we call them 'Devil Worshipers.' Nutjobs inspired by the Devil of Hell's Kitchen."²⁷⁹

²⁷⁵ *Id.* at Ch. 2 at 7.

²⁷⁶ *Id.* at Ch. 4 at 3.

²⁷⁷ *Daredevil: World on Fire*, *supra* note 75, at 3. When Murdock at times attempts to fudge this line, he has friends who remind him. Thus, in Season Two, simple-but-gifted armor maker Melvin Potter points out, "You don't have a badge, either." *Daredevil: Dogs to a Gunfight*, *supra* note 100, at 19.

²⁷⁸ See *supra* Part IV.A.1.i.

²⁷⁹ *Daredevil: Dogs to a Gunfight*, *supra* note 100, at 7. In this instance, Mahoney's most direct referent is Punisher who, unbeknownst to police at that time, does not seem to have been influenced by Daredevil's vigilantism as opposed to merely a desire for 'justice' for his own family.

As for the Robinsons' Rule 2, Murdock certainly seeks to avoid injury to innocent bystanders, but realizes he risks getting wrong just who satisfies that criterion.²⁸⁰ And massive gun battles of course risk significant collateral damage. Daredevil does (rarely) inadvertently cause death, as when a blind heroin mule is shot by another criminal during one of Daredevil's raids (that mule of course not being *fully* innocent but also not legally deserving anything akin to death).²⁸¹ In the real world, anyone bashing people about like Daredevil routinely does would cause much more death, but I suppose it would be unfair to hold Murdock to standards beneath those his superpowers permit. As for whether Murdock causes no more harm than "is necessary and just," that criteria is sufficiently vague to provide ample fodder to either side.

As for Robinson Rule 3, there is at least some indication that Murdock first attempts lawful resolution. For example, when he describes his first foray into vigilantism, he mentions that he first tried social services to protect the victim, only taking extra-legal action when that societal mechanism failed.²⁸² It is less clear, however, whether he continues in this vein once his vigilante career takes off in earnest. But at least in one sense Murdock is very faithful to this Rule: his goal is to leave criminals for the police and the system, not to—Punisher-style—kill them.

As for Rule 5, Murdock regularly uses both investigation (including by his law firm) and his extra-sensory perceptions to be confident of guilt before acting. And he is interested in mitigations—most poignantly, he visits Wilson Fisk's lover at her place of work in order to get a better sense of Fisk, by which he learns "[t]hat he has someone he loves...who loves him, who'd mourn his loss."²⁸³

As for Rule 6's requirements of *restraint* and *temperance*, Murdock struggles with not crossing these nebulous lines. In the very first episode, during the Sacrament of Penance, Murdock describes how sometimes his father—in the midst of a boxing match—would just "snap" and "let the devil out."²⁸⁴ Murdock did not fully understand it as a boy, but he does as an adult,²⁸⁵ and his bright line "no

But then-prevailing social conditions served as the backdrop for Punisher's decisions. Karen too at one point wonders whether Daredevil—and public acceptance of him—in a sense created Punisher:

Well, actually, I think it's a pretty straight line, Matt. Daredevil practiced vigilante justice in our backyard and we applauded him for it. I know that I did. And we never stopped to think that maybe his actions could open the door for men like this. Men...men with guns. Men who think that the law belongs to them.

Id. at 18.

²⁸⁰ See *Daredevil: World on Fire*, *supra* note 75, at 2 ("I just wish I knew I was hitting the right ones.").

²⁸¹ See *id.* at 6–7.

²⁸² See *Daredevil: Nelson v. Murdock*, *supra* note 1, at 25.

²⁸³ *Daredevil: Speak of the Devil*, *supra* note 83, at 14.

²⁸⁴ *Daredevil: Into the Ring*, *supra* note 72, at 2–3.

²⁸⁵ *Id.* at 3.

killing” rule seems one attempt at not running afoul of such norms.²⁸⁶ Whether such a line is sufficient requires a much more nuanced sense of just what sorts of restraints and temperance are required (what of punching a few more times than strictly necessary?), but at least it makes clear that the concept of necessary restraint is respected—something that, for example, Wilson Fisk would not accept. But what if Murdock’s restraint renders his vigilantism ineffective, or at least much *less* effective than it otherwise might be? Since Frank Castle is Murdock’s foil in this, it makes sense to compare their actions and motivations.

But first, as for Rule 9, the targets of Murdock’s vigilantism are socially condemned, as nurse Claire Temple expresses: “You want the ER perspective? Victims love him. Victimiziers? Want him more dead than ever. . . . I believe in what he’s doing, I believe the city needs him.”²⁸⁷

C. Frank Castle/*The Punisher*

In most regards, Frank Castle’s vigilantism mirrors that of Matt Murdock: There is the same serious failure of justice. Castle scrupulously avoids injury to innocent bystanders.²⁸⁸ There seems no lawful way to get the corrupt justice system to respond. And Castle—presumably on account of diligent inquiry—has an almost omniscient sense of what particular criminals have done.²⁸⁹ But in one sense the two are diametrically opposed: Castle kills his victims, while Murdock draws the line at savage—but non-lethal—beatings.

In a scene modeled on a wonderful comic,²⁹⁰ Punisher tries to convince Daredevil that his methods are superior.²⁹¹ Punisher does “what’s required”²⁹² to

²⁸⁶ “You got the wrong guy. I don’t kill people.” *Daredevil: Condemned*, *supra* note 84, at 5. “I’m not a killer. I keep telling people that.” *Daredevil: Shadows in the Glass*, *supra* note 83, at 26.

²⁸⁷ *Daredevil: New York’s Finest*, *supra* note 103, at 13.

²⁸⁸ “I only hurt people that deserve it. I wanted you to know that.” *Daredevil: Regrets Only*, *supra* note 105, at 24 (statement of Punisher to Karen Page). The police recognize this *modus operandi* (see *Daredevil: Dogs to a Gunfight*, *supra* note 100, at 11), and the careful viewer notices it when she first sees Punisher in Season Two Episode One: Punisher incapacitates but does not kill a hospital security guard (*Daredevil: Bang*, *supra* note 98, at 27), and while he proceeds to shoot as he makes his way to his intended victim (mobster Elliot Grote), he shoots only at objects in order to get people to flee (*Daredevil: Bang*, *supra* note 98, at 28; *Daredevil: Regrets Only*, *supra* note 105, at 24).

²⁸⁹ For example, he knows the intimate details of Eliot Grote’s crimes. See *Daredevil: New York’s Finest*, *supra* note 103, at 23–25.

²⁹⁰ The scene is derived from *The Devil by the Horns*, THE PUNISHER #3 (Marvel Comics June 2000). In the comic, Punisher tries to force Daredevil to see his point of view by giving him a choice: either shoot the armored Punisher in the head, killing him, or Punisher will kill a criminal Matt Murdock is defending in court. *Id.* at 13–18. “If you don’t shoot you’ve got a death on your conscience. A death you could have prevented. If you do shoot, you’re a killer.” *Id.* at 18. Daredevil takes the shot (“God forgive me”), but Punisher had removed the firing pin. *Id.* at 20–21. “No firing pin. You can leave the killing to me.” *Id.* at 21. It seems Castle merely wanted Daredevil to appreciate that the right choice—at least sometimes—might be to kill.

²⁹¹ *Daredevil: New York’s Finest*, *supra* note 103, at 10–11.

keep people “from hurting anybody else”²⁹³ and, as he sees it, no more. In his mind, what separates himself from Daredevil is a willingness to do what justice actually demands:

Punisher: You run around this city in a pair of little boy’s pajamas and a mask. You go home at night, right? Take that mask off, maybe you think it wasn’t you who did those things, maybe it was somebody else. . . . Everything you do out there in the streets, Red, it doesn’t work. Did you know that?

Daredevil: Oh, and what you’re doing is better?

Punisher: What I do, I just do. It’s out of necessity. . . . What kind of name is the Devil of Hell’s Kitchen, anyway? I mean, really?

Daredevil: I didn’t ask for that name.

Punisher: I’m sorry, I don’t see you running from it.

Daredevil: I don’t do this to hurt people.

Punisher: Yeah, so what is that, just a job perk?

Daredevil: I don’t kill anyone.

Punisher: Is that why you think you’re better than me? . . . Is that why you think you’re a big hero?

Daredevil: It doesn’t matter what I think or what I am. People don’t have to die.

Punisher: Come on, Red. You believe that?

Daredevil: I believe it’s not my call, and it ain’t yours either.

Punisher: Somebody ask you to put on that costume or you take it upon yourself? You know what I think of you, hero? I think you’re a half-measure. I think you’re a man who can’t finish the job. I think that you’re a coward. You know the one thing that you just can’t see? You know you’re one bad day away from being me.²⁹⁴

This is, of course, precisely Murdock’s fear. But there is more to Murdock’s reticence than merely the fear that he will lose his own morality/humanity. Murdock also sees the humanity in those he goes up against (and I quote liberally because the script writing is so spot-on):

Daredevil: You ever doubt yourself, Frank?

Punisher: Not even for a second.

Daredevil: Really? Really? You never think for one second, “shit, I just killed a human being.”

Punisher: That’s being pretty generous.

²⁹² *Id.* at 4.

²⁹³ *Id.* at 27.

²⁹⁴ *Id.* at 9–11.

Daredevil: A human being who did a lot of stupid shit, maybe even evil, but had one small piece of goodness in him. Maybe just a scrap, Frank, but something. And then you come along, and that one tiny flicker of light gets snuffed out forever.

Punisher: I think you're wrong.

Daredevil: Which part?

Punisher: All of it. I think there's no good in the filth that I put down. That's what I think. . . . Look around, Red. This city, it stinks. It's a sewer. It stinks and it smells like shit and I can't get the stink out of my nose. I think that this world—it needs men that are willing to make the hard call. I think you and me are the same!

Daredevil: That's bullshit, Frank, and you know it!

Punisher: Only I do the one thing that you can't. You hit 'em, and they get back up. I hit 'em, and they stay down. It's permanent. I make sure that they don't make it out on the street again. I take pride in that.

Daredevil: Let me ask you this.

Punisher: What's that?

Daredevil: What about hope?

Punisher: Oh, fuck.

Daredevil: Come on, Frank.

Punisher: You wanna talk about Santa Claus? You wanna talk about Santa Claus?

Daredevil: I live in the real world too, and I've seen it.

Punisher: Yeah? What have you seen?

Daredevil: Redemption, Frank.

Punisher: Ah, Jesus Christ.

Daredevil: It's real. And it's possible. The people you murder deserve another chance.

Punisher: What, to kill again? Rape again? Is that what you want?

Daredevil: No, Frank. To try again, Frank. To try. And if you don't get that, there's something broken in you you can't fix, and you really are a nutjob.

Punisher: What did you say?

Daredevil: You're...you're unhinged, Frank. You are. You think God made you a one-man firing squad. But you're wrong. There is goodness in people, even in you. And you're gonna' have to kill me, 'cause I'm never gonna stop coming for you, until I take you down.²⁹⁵

²⁹⁵ *Id.* at 17–19.

Punisher then seeks to draw Daredevil over his line by getting him to kill Elliot Grote, who confesses to having murdered two people, but Daredevil refuses to take the bait.²⁹⁶

Despite this strong disagreement, Murdock recognizes that he and Punisher share the same motivation, as he later confides to Foggy Nelson: “His methodology is clearly wrong, but, in his own kind of way, he was trying to do something noble. . . . He wanted justice, Foggy, like us.”²⁹⁷ And indeed, when the times get sufficiently tough, Murdock questions his own choice.

Towards the end of Season Two, Murdock is beaten down on every front. He put Fisk in jail, but now Fisk runs that jail like a king. He saw Castle to trial, but now Castle walks free. He established a law firm with Nelson, but now that firm is shuttered. He had a relationship with Karen Page, but now she wants nothing to do with him. He had a confidant in Claire Temple, but now she is disillusioned and berates Murdock for his pride. So, Murdock caves, expressing a willingness to work with Castle on his terms: “You’re right. My way isn’t working. So, maybe just this once...maybe...yeah, your way is what it’s gonna take.”²⁹⁸ Castle declines, seeming to know it would cost Murdock too much. But Murdock soon expresses much the same to Elektra—who has no hesitation in killing²⁹⁹—and he seems to accept the help of Castle’s killing when it saves his own life.³⁰⁰ The new Murdock seems at peace fighting alongside those who kill, while still not personally delivering deadly blows.

So, who makes for the moral vigilante? The Matt Murdock who will not kill? The Frank Castle who will? The Matt Murdock who seems less certain? Does it matter that Punisher’s methods are seemingly more effective deterrence than those of Daredevil?³⁰¹ Does it matter if Punisher acts more in revenge for his family’s killing than in retributive justice for the people of Hell’s Kitchen?³⁰² Does it matter that real humans are very unlikely to ever have Murdock’s choice—being able to savagely beat groups of machine-gun-wielding criminals but not kill? Does it matter that Hell’s Kitchen’s people—from prospective jurors to the police force—are divided?³⁰³

²⁹⁶ *Id.* at 23–26.

²⁹⁷ *Daredevil: Regrets Only*, *supra* note 105, at 9.

²⁹⁸ *Daredevil: .380* (Netflix Mar. 18, 2016) at 25.

²⁹⁹ *See Daredevil: A Cold Day in Hell’s Kitchen*, *supra* note 117, at 18.

³⁰⁰ *Id.* at 21.

³⁰¹ *See Daredevil: Dogs to a Gunfight*, *supra* note 100, at 23. The DA expresses that, thanks to Punisher, “Lots of low-lives are looking to get out of the crime business for good.” *Id.* Karen Page similarly urges that “right or wrong, you can’t deny that [Punisher’s method] works.” *Daredevil: Semper Fidelis*, *supra* note 2, at 23.

³⁰² *See Walen*, *supra* note 224 at § 3.7.

³⁰³ During voir dire for Frank Castle’s prosecution, prospective jurors range from considering Castle a hero to the worst sort of criminal. *See Daredevil: Semper Fidelis*, *supra* note 2, at 1. Brett Mahoney summarizes the views of the police as follows:

For me, these questions are difficult. It seems Paul and Sarah Robinson have done good work—we can systematically differentiate the Wilson Fisk from the Matt Murdock—but on the harder questions I do not find an answer. Perhaps we are just back to the Trolley Car, including whether necessity can ever justify an intentional killing. Are we to prefer consequentialist moral thinking or deontological moral thinking? Even if deontological, is the good to be gained sufficient to exceed the threshold under which standard moral rules apply? In other words, perhaps we are back to very hard, but well-known, questions. Or, perhaps there are vigilante-specific questions and rules. For now, even independent of the killing/no-killing question, those rules elude me.

Before turning to another possible source for such rules, we should recognize a character in Marvel's Hell's Kitchen who serves as a Robinson *shadow vigilante*. There are several who fit that mold—nurse Claire Temple, journalist Karen Page, and Officer Brett Mahoney. For the sake of brevity, I will consider only the last.

D. Brett Mahoney

As described above, given Paul and Sarah Robinson's focus on the *relatively* just American system, they are most concerned with the downward spiral in community confidence they believe shadow vigilantes can cause.³⁰⁴ But in a world like Marvel's Hell's Kitchen, it seems those who aid classic vigilantes might be as important and as moral as those who play that classic role. Here I focus on the genesis of one, Officer Brett Mahoney.

A youthful acquaintance of Foggy Nelson, Sergeant Mahoney interacts with Nelson & Murdock from the first episode, willing to tip off the eager defense attorneys if an arrestee needs their assistance.³⁰⁵ He seems to have no love for Nelson, however, and he might be sharing information solely because he believes in the adversary system.³⁰⁶

Whatever the case, Mahoney definitely begins with no love for the vigilante Daredevil. When the two meet, Daredevil has to forcefully subdue Officer Mahoney in order to try and convince him that he is not the bad guy, as opposed to

The DA's office says the shooter's independent—vigilante type, targeting different crime families. And not in a...a Daredevil way. In a *Death Wish* way. . . . Daredevil kicks ass—this whole city cheers like we just won the World Series. But this guy? He does it, and the streets get bloody. Makes everybody stop and think twice about the whole 'hero' proposition. . . . The whole force is split. Some cops want him off the street; others think he's making our jobs a whole lot easier.

Daredevil: Dogs to a Gunfight, *supra* note 100, at 7. For her part, Karen Page is unable to decide. *Daredevil: Semper Fidelis*, *supra* note 2, at 22.

³⁰⁴ See *supra* Part IV.A.1.ii.

³⁰⁵ *Daredevil: Into the Ring*, *supra* note 72, at 5–6, 8.

³⁰⁶ See *id.* By the end of the first season, having seen their work, Mahoney is willing to share some confidential police information with Nelson and Murdock. See *Daredevil: Daredevil*, *supra* note 84, at 9–10.

corrupt officers beholden to Wilson Fisk.³⁰⁷ When Daredevil later defeats the now-fugitive Fisk and it is Mahoney who first arrives on scene, Mahoney decides not to pursue an arrest of the vigilante.³⁰⁸ But Mahoney is still largely playing by the rules, asking “so what am I supposed to call you when I file my report?”³⁰⁹ And while he might not arrest, Mahoney is not about to directly assist. When they next meet in Season Two, Mahoney refuses to provide Daredevil any information:

I’m not telling you shit. You helped us catch Fisk, that don’t make us friends. . . . It’s the goddamn Wild West out there. . . . [Y]ou can’t help. You’re the problem! ’Cause of you, the uniform means dick. Cops are no longer preventing crime, we’re just chasing it. Mopping up the mess that you people leave in your wake.³¹⁰

Thus, when the two meet again, following Daredevil’s defeat of the fugitive Frank Castle (Punisher), Mahoney *does* place Daredevil under arrest: “Shots fired. Bodies, mayhem, and shit. How come I just knew it had to be you? . . . [Y]ou incredible pain in my ass; you’re under arrest.”³¹¹ When Daredevil does not resist, however, and instead explains that the police must take credit for Punisher’s apprehension, Mahoney reconsiders:

Daredevil: Take the collar [the arrest].
 Mahoney: What?
 Daredevil: You heard me. You caught him, not me. It can’t be me, it has to be you.
 Mahoney: Why?
 Daredevil: To protect the Kitchen. For law. For order.
 Mahoney: You’re telling me how to file a report now?
 Daredevil: Yeah. Take the collar. Take the credit. Get a promotion, if you can. You’ve earned it.
 Mahoney: Bullshit.
 Daredevil: No, people have to know the system works. Not his [Punisher’s] justice and not mine. Vigilante days are done in this town. The police are in charge.
 Mahoney: That’s not how it happened.
 Daredevil: Then make it how it happened.³¹²

³⁰⁷ *Daredevil: The Ones We Leave Behind*, *supra* note 147, at 20.

³⁰⁸ *Daredevil: Daredevil*, *supra* note 84, at 23–24.

³⁰⁹ *Id.* at 24.

³¹⁰ *Daredevil: Penny and Dime*, *supra* note 102, at 14.

³¹¹ *Id.* at 26.

³¹² *Id.* at 26–27.

Mahoney does, allowing Daredevil to leave and filing a false report that takes credit for Punisher's apprehension, which earns him a promotion to detective.³¹³ Detective Mahoney has thus become a shadow vigilante, bending the rules in an attempt to do the justice the system should be—but is not—doing.³¹⁴

Mahoney arguably satisfies the rules of moral vigilantism articulated above, just like Matt Murdock and perhaps like Punisher. But those rules left us with some uncertainty. Indeed, although I have not pressed the case, *is* it really clear that the ruthless Wilson Fisk is not a moral vigilante under those rules if he is responding to pervasive criminal justice failure and hoping to ultimately reform the city? Can the ends justify any means? Surely not, but do we have an adequate articulation of what means are therefore unacceptable? Moreover, in Mahoney's case, can someone who works *for* the criminal justice system be a vigilante?

The answers would seem to be that the ruthless Wilson Fisk is not a moral vigilante but that an insider can be one. In order to put some meat on those intuitions, let us return to Paul and Sarah Robinson's formulation, and then turn to another formulation of vigilantism, this one by Les Johnston as refined by Travis Dumsday.

E. Les Johnston and Travis Dumsday

Although Paul and Sarah Robinson's conception of vigilantism and their rules for moral vigilantism are illuminating, their exposition at times caused me confusion. Most prominently, in Chapter One, appropriately titled *Who Are Vigilantes?*, they begin by bemoaning our current state of affairs, namely that "[t]oday, the Klu Klux Klan is a classic paradigm for vigilantism."³¹⁵ They support that claim with notorious and horrible murders of social rights workers committed by the Klan.³¹⁶ And because it spurred then-President Clinton to use the term "vigilante," they include a more recent murder of an abortion provider.³¹⁷ If such persons can be vigilantes, then probably Wilson Fisk can as well.

But under what definition of vigilantism are the Klan and the anti-abortionist included? I suppose under the vague Merriam-Webster definition they could be punishing the "crimes" of racial integration or abortion, or more generally "do[ing] [perverted] justice," but that would seem a very different definition from that Paul

³¹³ *Id.* at 27; see also *Daredevil: Regrets Only*, *supra* note 105, at 10.

³¹⁴ Mahoney continues breaking the law going forward. When attorneys Nelson and Murdock convince him that the public defender will not competently represent Frank Castle, he allows them into Castle's hospital room. *Daredevil: Regrets Only*, *supra* note 105, at 10–11. And he works directly with Daredevil, including taking Daredevil's advice on what to keep out of public reports. *Daredevil: The Man in the Box*, *supra* note 107, at 2–3.

³¹⁵ ROBINSON & ROBINSON, *supra* note 220, at Ch. 1 at 2. See also *id.* at Ch. 5 at 1 where the claim is repeated.

³¹⁶ *Id.* at Ch. 1 at 1–2.

³¹⁷ *Id.* at Ch. 1 at 2–3.

and Sarah Robinson provide. It would seem to mean any criminal who believes her actions justified is thereupon a vigilante, which seems to bear little relation to reacting to pervasive and repeated breaches of the criminal-justice contract by the state. After all, presumably the state agrees only to enforce those crimes *recognized as crimes* by the agreed-upon and reasonably functioning social structure, and in these instances there has been no such breach. Would not a would-be vigilante have to be pursuing what are typically socially agreed to be legitimate *aims* of the state, albeit via what are ordinarily (in most circumstances) illegitimate *means*? In other words, were Klan murders of social rights workers acts of immoral vigilantism (see Robinson Rule 9, among others), or simply not vigilantism at all?

A much better candidate for the paradigm of vigilantism seems to be the *response* to the blatantly illegal—and morally repulsive—conduct of the Klan, which Paul and Sarah Robinson also describe.³¹⁸ To the extent that the (black) Deacons for Defense and Justice took actions beyond those permitted by the laws of self-defense, defense-of-others, and the justification of law enforcement³¹⁹—and from the Robinsons’ account it is not clear that they did—but to the extent they did, *that* would seem to be action responding to wrongdoing and state failure, but technically illegal. So, *that* would be vigilantism, but I’m not certain why the Robinsons bemoan the Klan being the “classic paradigm” of vigilantism as opposed to simply rejecting that as mischaracterization.³²⁰

So, I believe it would be correct under Paul and Sarah Robinson’s formulation of vigilantism not merely to say that the Klan murders were *evil* vigilantism, as they recognize, but to make the stronger claim that they were not instances of vigilantism at all. But which is the *better* description? Here let me bring in another definition of vigilantism, that of Les Johnston, which has been scrutinized and modified by Travis Dumsday.³²¹

Les Johnston has defined vigilantism as:

³¹⁸ *Id.* at Ch. 1 at 3–4.

³¹⁹ For explanations of these traditional exemptions from criminal liability see JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 221–23, 255–57, 273–75 (6th ed. 2012).

³²⁰ To be fair—and clear—Paul and Sarah Robinson do include this: “The Deacons of Defense are not an aberration. Many groups have, with moral justification, taken the law into their own hands. This is the essence of vigilantism. Indeed, the origin of the term ‘vigilante’ [namely San Francisco’s Vigilance Committee] suggests something very different than popular use that brings to mind a Klu Klux Klan lynching and shooting abortion doctors.” ROBINSON & ROBINSON, *supra* note 220, at Ch. 1 at 4. But to the extent that is a denial that the Klan are appropriately termed “vigilantes,” it seems a weak one, and it is not clear what is the “popular use” to which they keep referring, nor to why they do not emphasize their own definition of the term. For example, according to Google Trends, people in Montana search for the term “vigilante” most often in the United States, and I cannot imagine that reflects their interest in the Klan. See *Vigilante*, GOOGLE TRENDS, <https://www.google.com/trends/explore?geo=US&q=vigilante> [<https://perma.cc/96DJ-X7H6>] (last visited Sept. 9, 2016). And the related topics are video games, movies, and comics such as Batman and Spider-Man. *Id.* Again, far from the Klan.

³²¹ Dumsday, *supra* note 234.

[A] social movement giving rise to premeditated acts of force—or threatened force—by autonomous citizens. It arises as a reaction to the transgression of institutionalized norms by individuals or groups—or to their potential or imputed transgression. Such acts are focused on crime control and/or social control and aim to offer assurances (or ‘guarantees’) of security both to participants and to other members of a given established order.³²²

Under Johnston’s definition, the Klan murders do seem to be vigilante acts: (1) they are premeditated, unlike the “pub brawl” or “playground scuffle;”³²³ (2) they are acts of force; (3) they are acting as “autonomous citizens,” not as agents of the state; (4) they are a reaction to the transgression of institutionalized racist norms, meaning a threat to the status quo; and (5) they are aimed at social control, hoping to offer assurance to other members of the racist order.

Travis Dumsday carefully parses Johnston’s definition, and derives a preferred variation. For Dumsday, vigilantism is:

[T]he organized use of violence or threat of violence by an agent or agents who are not willingly accountable to the state, for the purpose of controlling (preventing and/or punishing) criminal or noncriminal but still deviant actions; which violence or threat of violence is directed specifically against the perpetrators or alleged perpetrators of those actions, in accordance with the vigilante’s own system of minimally defensible values, the motivation for which must include what the vigilante perceives to be a concern for justice or the good of the community.³²⁴

Here the Klan murders seem to satisfy *most* of the requirements: (1) they are organized, meaning they require at least minimal preparation and planning;³²⁵ (2) they are acts of violence; (3) the agents are not willingly accountable to the state with regard to their murderous actions, in that they “do not care what the state thinks of those actions;”³²⁶ (4) they are intended to punish noncriminal but perceived “deviant” actions; (5) they are directed against the perpetrators of those actions; (6) they are in accordance with the vigilante’s own system of values; and (7) the Klan members are motivated by their concern for—in their minds—the good of the community. There is one requirement, however, the killing would seem to fail: Dumsday requires that “the value being defended must be one that an

³²² Les Johnston, *What is Vigilantism?*, 36 BRIT. J. CRIMINOLOGY 220, 232 (1996).

³²³ *Id.* at 222.

³²⁴ Dumsday, *supra* note 234, at 58.

³²⁵ *Id.* at 51.

³²⁶ *Id.* at 53.

ideally rational agent would regard as at least arguably worth defending.”³²⁷ Racism would fail, for it is not even “minimally defensible.”³²⁸ And the actions of Wilson Fisk would fail, as his violence is not aimed at the perpetrators of criminal actions, but instead is a sort of temporary, violent uprising that will somehow usher in a new and better world (sort of like the theory of communism without the logic of directing the force at the bourgeoisie).

What of the other denizens of Marvel’s Hell’s Kitchen? Both Daredevil and Punisher come off as vigilantes, once again leaving unclear whether one or both is a *moral* vigilante. What about Officer Mahoney? Dumsday, unlike Johnston but like the Robinsons, would *not* discredit Mahoney’s actions from vigilantism merely on account of his status as a police officer: in taking the particular actions of interest—for example, in filing a false report—Mahoney is not willingly accountable to the state.³²⁹ That seems right. On the other hand, Dumsday would discredit Officer Mahoney’s actions from vigilantism because his actions are not violence or a threat thereof, let alone violence directed at criminals or otherwise-deviant actors. Why would violence be the only vigilante action? I am not sure that it is, and Dumsday offers no justification, proffering only that the requirement “seems reasonable.”³³⁰ Like my assertion that Dumsday’s version of state action “seems right,” this leaves hard work to do.

Once again, we do not seem to have a fully satisfying account of what makes for a vigilante, let alone for a *moral* one.

V. CONCLUSION

In *Daredevil*’s second season, Karen Page asks this:

But what about when the law fails? Like it did with me. Like it did with Frank. You know, what are we supposed to turn to? What should we...What should we believe will protect us then? . . . I keep asking myself if there’s really a difference between . . . someone who saves lives [Daredevil] and someone who prevents lives from needing to be saved at all [Punisher].³³¹

In other words, what makes for a moral vigilante? Existing literature provides some answers in easy cases, but I do not think it provides complete answers. Nor have I done so in this paper. It appears that knowing who is a ‘good guy’ in

³²⁷ *Id.* at 56.

³²⁸ *See id.* at 56–57 (classifying sexism as not minimally defensible); *see also id.* at 62 (in a different context classifying racism as indefensible).

³²⁹ *See id.* at 52–54 (describing vigilantism by otherwise state actors).

³³⁰ *Id.* at 51.

³³¹ *Daredevil: Semper Fidelis*, *supra* note 2, at 22.

Marvel's Hell's Kitchen will have to await a sequel...and perhaps also Season Three.